



CENTRAL EUROPEAN UNIVERSITY
CENTER FOR POLICY STUDIES



OPEN SOCIETY INSTITUTE

VESNA PESIC

State Capture as the Cause of Widespread Corruption in Serbia

2006 / 2007

CPS INTERNATIONAL POLICY FELLOWSHIP PROGRAM



VESNA PESIC

State Capture as the Cause of Widespread Corruption in
Serbia

This policy paper was produced under the 2006-07 International Policy Fellowship program. Vesna Pesic was a member of `The Challenge of Wider Europe` working group, which was overseen by Michael Emerson. More details of their policy research can be found at <http://www.policy.hu/themes06/weurope/index.html>.

The views contained inside remain solely those of the author, who may be contacted at vpesic@policy.hu. For a fuller account of this policy research project, please visit <http://www.policy.hu/vpesic/>

April 2007

Language Editing – Martin Baker

Formatting and Type setting – Tamas Sellei

International Policy Fellowship Program

Open Society Institute

Nador Utca 9

Budapest 1051

Hungary

www.policy.hu

This document is available under a Creative Commons distribution copyright

Contents

Introduction: The Rise of ‘State Capture’ and Large Scale Corruption	5
<i>The Extent of the Problem</i>	6
1. The Model of State Capture in Serbia and its Mechanisms	10
<i>The Mechanisms Used</i>	11
2. How the Government Functions as a Confederation of Party “Fiefdoms“ ..	13
<i>The Feudal/Party System at the National Level: The Case of the Ministry of Finance and the Ministry of Education and Sport</i>	13
<i>How the ‘Feudal System’ Functions in Practice</i>	14
<i>The Case of the Ministry of Finance</i>	16
<i>Serbian Statistics</i>	17
<i>The Case of the Ministry of Education and Sport (MES)</i>	17
<i>Public Companies</i>	20
<i>Local level: The Case of the City of Novi Sad</i>	23
3. Degradation of the Serbian Parliament and the Multiple Functions of MPs	25
4. Regulatory Institutions, Laws and Anti-corruption Policies in Serbia: An Overview with Special Attention being given to the Law on Financing Political Parties.	29
<i>The Law on the Financing of Political Parties</i>	32
5. A Survey of Public Opinion about Corruption and State Capture	35
<i>Concerns about Corruption and Confidence in Institutions</i>	35
<i>Job Appointments for Public Office</i>	37
<i>Tolerance of Corruption in Public Office, and an Efficient Anti-corruption Strategy</i>	39
Conclusions and Policy Recommendations	40
<i>General Conclusions</i>	40
<i>Policy Options and Recommendations</i>	42
Methodology	46

Introduction: The Rise of 'State Capture' and Large Scale Corruption

Large-scale and systemic state capture is at the root of widespread corruption and is gaining such proportion in Serbia that it threatens to undermine the success of its transition. The phenomenon of state capture has to be differentiated from the corrupt activities of giving and receiving bribery ("administrative corruption") and is to be connected with the institutional and legal weaknesses of the social system. Recent literature defines state capture as the 'seizure' of laws to the advantage of corporate business via influential political links in parliament and the government. When the state is 'captured' in this manner, the whole legal system becomes the opposite of what it should be - it works to the advantage of illegal interests that are dressed up in a legal form.¹ For the purpose of my policy paper, I have defined 'state capture' as any group or social strata, external to the state, that gains decisive influence over state institutions and policies for its own interests, and against the public good. I will show that, in Serbia, political parties are the main agents being used to appropriate the state and public assets. They are systematically expanding their political and financial power, influence and ability to give employment to relatives and party cronies and to promote the personal and corporate interests of the political and economic elite in control behind the scenes. The appropriation of state institutions and functions by the political party leadership is being done via the use of a variety of mechanisms, which I will explain using research data. How the citizens of Serbia perceive the roles of parties in state capture and corruption will be presented, too - using a survey of public opinion conducted specifically for this policy paper. I will conclude by presenting a list of policies that should be examined and resorted to, to reduce or neutralize the captured state phenomenon.

The Extent of the Problem

During the first two transition years after the overthrow of Milosevic in 2000, political corruption in Serbia declined. The government was not a centre of corruption as was the case with the previous regime.² When the first democratic Prime Minister was assassinated and his government³ was forced to resign under pressure from his political rivals (the same victorious coalition which took power in October 2000, against Milosevic, and which were backed by the “old forces”) state capture was renewed together with the rise of *party influence* over state institutions.⁴ After the December 2003 elections and after a new government was created in March 2004, state capture began to reach alarming proportions – a trend that has continued for the last two and a half years. The degree of political corruption is corroborated by the World Bank report on patterns and trends regarding corruption in all transition countries for the 2002-2005 period.⁵ Research shows that some transition countries have been able to have continued success in fighting corruption (Georgia, Slovakia, Romania, Bulgaria and Croatia made headway during these years with regard to all dimensions, while Moldova, Tajikistan, The Ukraine and Latvia made progress along some dimensions). On the other hand, some countries - including Serbia, Albania, the Kyrgyz Republic and Azerbaijan - saw an increase in corruption after 2002 with regard to relevant indicators. Serbia has seen both an increase in “petty” i.e. administrative corruption (bribery)⁶ and in the topic this paper deals with - state capture - which is qualified as “grand and systemic corruption”, something rooted in political corruption and the non-controlled powers of a political elite. With regard to higher levels of state capture, Serbia finds itself in the same group as Albania, Bosnia-Herzegovina and the FYR of Macedonia.

Serbian citizens' perceptions of corruption coincide with the WB research results and the TI CPI ranking. Survey data arrived at for this policy paper (see Annex I) shows that Serbia's citizens think corruption is widespread and that it has increased in recent years. When asked about amounts of corruption, only 3% of those polled think it is minor, 34% qualify it as considerable, while 53% perceive it as widespread. As many as 56% of respondents thought that corruption has risen in the last two years, while only 19% were of the view that it has decreased (while the rest had no opinion). Answers to the question of “During which government has corruption been greatest?” yielded similar percentages: 51% said it was no greater than in the Milosevic era, while

25% said it was at its highest level now. Only nine percent reckoned corruption was at its highest during the first post-Milosevic government (led by Prime Minister Djindjic), while 5% thought it was highest when Prime Minister Zivkovic led the same government after Djindjic's assassination.⁷

After the government transition, there was a change of priorities, leading to a more old-styled manner of governance, as expressed in political/party control of the police, the security intelligence agency, the media, and the judiciary; and there was a bringing back of old cadres to positions in state organs. Whereas the first Djindjic Government⁸ ambitiously and enthusiastically concentrated on enabling Serbia to become integrated with the EU as soon as possible, enthusiasm for the EU integration process noticeably ebbed after the second government came to power. A rightist clerical-nationalist party has played the lead role in the coalition government set up in March 2004.⁹ Adverse to Western values, it has placed a commitment to EU integration on the back burner.¹⁰

The second transition government continued to pass a number of anti-corruption laws,¹¹ thereby contributing to a trend towards an improvement of Serbia's position as regards its TI rating score in the period 2003-2006 (before Serbia stopped being rated). The most-recent publication of the TI Corruption Perception Index (CPI), for 2006, shows that Serbia has slightly improved its position, going from a 97-103 ranking to a 90-92 ranking (which it shares with Surinam and Gabon); and it has a CPI of 3.0 (it was 2.7 for 2004 and 2.8 for 2005), among 163 countries. This grade is still very low and signifies endemic corruption (N.B. 5.0 means that corruption has been reduced to a somewhat bearable level). A comparison with ex-socialist countries shows that the best are Estonia with 6.7, Slovenia with 6.4 and Hungary with 5.2 - while Albania (2.6), Russia (2.5) and Belarus (2.1) have the worst positions. Serbia is in the bottom half of the 20 ex-socialist countries, holding 13th position on the list. Its grade is only slightly better than the worst and substantially worse (as compared with the best countries).

Although Kostunica's government has passed a number of laws which have had some effect on the country's rating, adequate institutional reforms have not been established to ensure accountability, transparency, the rule of law, public sector effectiveness and merit-based public office appointments. The implementation of some laws was postponed or was of no great consequence. Instead, the government has focused on reviving nationalist values and resolving the "Serbian national issue"

and has preserved the staff and corruptive institutional structures that better serve such objectives. State institution reforms have been merely rhetorical; insufficient encouragement has been given to the competitiveness of the economic and political systems; new decrees have extended discretionary decision-making methods.¹² Privatization of the big public companies has not yet begun¹³. The effectiveness of regulatory institutions has been sabotaged, and implementation of the Law on Auditing State Institutions and the Ombudsperson Law has been delayed. The Anti-Corruption National Strategy passed in December 2005 still lacks an institutional framework; and specific action plans have not yet been drafted.

A weakening of a European orientation for Serbia is being accompanied by a rebuilding - by the political and business elite¹⁴ - of 'state capture' mechanisms. These persons have been able to "seize control" of state institutions, exercise great influence and amass considerable wealth. The phenomenon of state capture is now responsible for large-scale corruption and has seriously jeopardized one's being able to act in the public interest - and, thus, the transition process *itself* in Serbia. Even though transition in the economic sphere, chiefly on a macroeconomic level, and as regards the privatisation process have continued, institution building for the political, judicial and administrative systems has been delayed, thereby creating this state capture opportunity.

The visible consequences of the deficiencies outlined above have been the continual and on-going corruption scandals that have been in the news in the past three years. All cases have been at a ministry level. The greatest number has been connected with the "finance party" (G17 Plus). Scandals have included: the privatization procedure as related to the National Savings Bank¹⁵; a bribery situation publicly known as the "Brief Case Affaire", involving the vice governor of the National Bank of Serbia; gross manipulation of a mineral water company privatization; graft in army procurement and an unauthorized commitment to purchase a satellite to monitor security zones around Kosovo. Other cases of suspected corruption having the potential to cause million-dollar losses for society involve the importing of electricity (the owners of the import company are said, in public, to be the financial backers of the biggest political parties), the importation of petroleum from Syria and the buying of railway carriages without a tender or the use of correct procurement procedures.¹⁶

None of these affairs has been resolved by legal process - and the government has “reacted” with its silence. The president of the Anti-corruption Council of the Government of Serbia, the advisory body founded by the Djindjic government to deal with this problem, estimated recently that the level of corruption in Serbia is once again at the pre-October 5th level (when Milosevic was in power). She pointed out that during the last three years there has been no audited National Final Budget Statement. She warned the public that the National Investment Plan (NIP) launched by the Minister of Finance and supported by the Government was passed in a corrupt manner - without a law for its implementation or control - via avoiding legal procedures and by giving discretionary decision-making to one specific group of ministers. And she has predicted that corruption in the country will rise notably if the NIP is implemented.

Recent events associated with the preparation and content of the new Constitution of Serbia and also to the related approval process confirm our initial hypothesis about ‘state capture’, i.e. one captured by the political/party elite. In mid-September 2006, leaders of the four biggest parties¹⁷ agreed, literally overnight,¹⁸ about their Proposal for a Constitution. Without a single day of public debate and solely based on the decisions of party leaders, Parliament passed the Proposal and called for a referendum of approval. Members of Parliament never received the Proposal nor did they have a chance to discuss it in session, when adopted. Citizens and their organizations did not have a chance to debate it either. Among items that reinforce state capture mechanisms being used by political parties concerning the Constitution, one is that MPs’ mandates belong to the *parties*. In Article 102 it is stated that “the MP is free to (...) irrevocably put his mandate at the disposal of the party on whose list he was elected MP”.¹⁹ In addition, MPs’ immunity rights have been broadened. These changes will strengthen the political powers of the party elite and its interests (i.e. executive power) and additionally degrade Parliament and MPs’ responsibilities as regards constituents’ interests by re-confirming their impunity. The public has given the new Constitution the name “The Functionary’s Constitution”. The legitimacy of the Constitution was soon demonstrated when the Basic Law on Implementation of the Constitution was on Parliament’s agenda. The parties made a “deal” that they would vote for the Law only if, during the first session of the new Parliament (after the January elections), the heads of two independent institutions were replaced: the Governor of the National Bank of Serbia and the Ombudsman for Information.²⁰

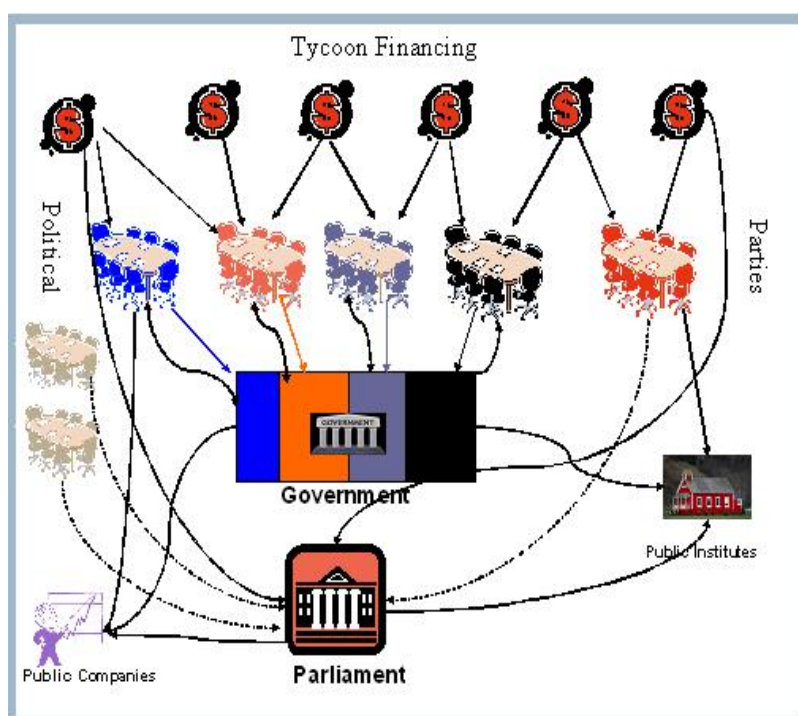
The new Constitution will not help curb 'state capture' or deal with damaging consequences; neither will it make the political leadership accountable to the public. Even worse, judicial independence is not guaranteed, via a preventing of party/political influence over the courts, the police and public prosecution. Getting to the roots of corrupt practices in governance is crucial when it comes to Serbia's ability to break the grip of rigid institutional structures constructed to protect vested interests - so that it might then proceed successfully with regard to the European Union enlargement process. Yet these two, clear mandates in the new Constitution will make it difficult to eliminate parties use of public office for their private interests (i.e. rather than for representing constituents' interests and pursuing the common good.)²¹

1. The Model of State Capture in Serbia, and its Mechanisms

From the point of view of systems theory, state capture is caused by weak functional differentiation within the social system. Boundaries between sub-systems do not exist or are porous. Power and goods from the economic sub-system are convertible into influence and goods in the political sub-system - and vice versa, depending on where dominant power in the social system lies. The most dominant power in Serbia is still located within the *political* system.

The most important 'capturing' agents are the political party leaderships, who have seized huge amounts of state property, including public companies, public offices and institutions, for their own interests. The second important type of agent is the country's 10-15 richest tycoons, who finance all relevant parties, thereby becoming *part* of the system.²² And both elites, in collusion with each other, have established a system of integrating influences, interests and services, for their mutual gain. This collusion has created an oligarchic social structure in Serbia that has undermined effective institution-building and the rule of law.

The main chains of influence and interest connections are demonstrated below (Picture1).

Picture 1: Model of State Capture in Serbia

Picture 1 (above) displays the mutual dependences existing between the political and business elites and shows how tycoons help sustain their political positions by financing all relevant parties; in return, the ruling parties look after economic markets, fix tenders and auctions, and pass legislation that is favorable to such tycoons. The illustration also shows how Government, Parliament and Parties are connected with public companies and public institutions, with these having their own 'shares' of power. The (black) links going from the government to the parties show that the position of the ruling parties in the described context *does* have a feedback effect regarding parties, for it makes their decision-making more centralized and oligarchic, and located, in practice, in the hands of the party's president.

The Mechanisms Used

The following analysis will concentrate on 'state capture' as a specific process in which political elites gain control of public offices, enterprises, utilities, and resources through a mingling of state, political party and economic power. Emphasis is placed on the concrete mechanisms showing how political parties impose their own will over public

interests, for their own benefit, how these mechanisms are incorporated within a multi-party system, and how this party-state amalgamation came to be achieved.

I have highlighted the following six, interconnected state capture mechanisms:

- Division of the government and the entire public sector into a feudal-type system whereby each party in the ruling coalition is given control over the portion it receives (based roughly on the number of MPs it has in parliament), as if it had its own private fiefdom.²³ The “vertical partition” of Government (as referred to in public) has done away with the political control abilities of coalition partners.
- Connected with the first, the second mechanism entails appointing leading party officials (presidents, their deputies, etc) to manage the ‘fiefdoms’ even though they are, simultaneously, actively working for their party offices. Because the party leader/feudal lord has Parliamentary MPs giving a majority of support to the government, corruption is, in practice, incorporated into the manner in which the government actually operates.²⁴ If a minister were to be dismissed for corruption, he would withdraw his MPs, and the government would lose its parliamentary majority and thus fall.
- A degrading of the Parliament and the mechanism used for bribing MPs, thus ensuring their loyalty. Obedience is obtained by offering MPs multiple functions/job postings, such as their being appointed to the managing boards of public companies or being given executive functions in local or regional government, thereby enabling such persons to get their hands on several sources of income.
- Parties in the ruling coalition have the exclusive ‘right’ to make appointments in state administration, public companies, utilities, institutes, agencies, funds, health, social and cultural centres, dormitories, veterinary surgeries, schools, theatres, hospitals, libraries, monuments and memorial park maintenance services – all of which belong to the public and are supported via the public budget. Management positions are not advertised, neither are they based on merit, which fact additionally harms the public interest and leads to widespread discrimination among citizens on the basis of party affiliation.²⁵
- The relationship between parties (government) and business is not regulated in a transparent manner because the Law on the Funding of Political Parties, passed in 2003, is deficient in its controlling mechanisms, so was neither strictly nor effectively implemented in practice. The effectiveness of this law is the same as that of other, similar laws for which some “political will” would be needed. There is a tacit agreement between the parties *not* to implement the law strictly.²⁶ As a result, corruption in this area has not diminished – and the parties themselves have remained centres of corruption.
- Political influence over the judicial system is excessive, and there is a lack of checks and balances existing between the three main state power blocks. The executive branch (which again represents party influence) has gained control of the Parliament, the courts and public prosecution. This key mechanism is an extensive and diversified, and also separate topic, one that needs to be investigated in-depth independently - so it will not therefore be a part of this research.

2. How the Government Functions as a Confederation of Party “Fiefdoms”

The party feudal system at the national level will be analyzed via my giving information related to the Ministry of Finance and the Ministry of Education and Sport. I will then describe how the “party state” functions at the local level by presenting the case of Novi Sad, the third largest city in Serbia and the capital of the Vojvodina province.

The Feudal/Party System at the National Level: The Case of the Ministry of Finance and the Ministry of Education and Sport

The Political System and what the Parties in the Ruling Coalitions Own.

Serbia has adopted a parliamentary political system. The party (or coalition of parties) that gets a majority of MPs in Parliament (250 seats) elects the Government as an executive state organ. The Government now has 19 ministries, but the number is changeable (each government decides about the number of ministries). It has the President of the Government (Prime Minister). The number of MPs of a particular party that are elected, if the party is a member of the government ruling coalition, defines the proportion the party will receive of the ministries and all other positions in the public enterprises (there are 17 public companies founded by the Government), institutions, agencies, foundations and services which are under the jurisdiction of the Government. Many positions are under the jurisdiction of each Minister. Since Serbia is a highly-centralized country, one Minister, for example, the Minister of Education and Sport has the authority to appoint more than 3000 directors of primary schools, and about 400 directors of secondary schools in Serbia²⁷ (schools in Vojvodina are not under the Serbian Ministry). The Minister of Health has similar appointment authority, appointing directors for the hospitals, health centres, and other health institutions founded by the Government etc. In addition to the appointments at the National level, there are a huge number of appointments in the public sector at the local level (governments, public companies, services and institutions which are under the jurisdiction of the autonomous provinces (Vojvodina and partly Kosovo), cities, and municipalities. Appointments in the provinces, cities and municipalities (there are about 160 municipalities) belong to the parties' coalitions at that level. Proportions vary from one city or municipality to another. It is estimated that the magnitude of power in the hands of the government/parties amounts to 40,000 appointments counting all levels - national, provincial, city and municipality.

At present, in Serbia, the ruling coalition comprises four parties,²⁸ so the distribution of 'fiefdoms' is as follows:

Party	MPs	Ministries	Quotas in Public Companies (management positions)
DPS	53	10 (11)	50%
G17+	34	4 (3)	30%
SRM-NS	22	5	20%
SPS	20	-	Quota of DPS

The coalition agreement will lay down the ‘percentages of public office’ that each ruling party can get in accordance with the number of seats it won in Parliament. The second part of the agreement has had a direct effect upon the growth of corruption in the last three years, though such a factor was not present in the first post-Milosevic government²⁹. It focuses on content, and classifies all offices by portfolio (horizontally and vertically). State capture and monopoly constitute part of the division – each coalition party receives a number of related portfolios to manage and provide staff by itself. Power is thus feudalized – each ruling party is the absolute ruler of its own ‘fiefdom’. The government now operates as a confederation of ‘power fiefdoms’ therefore. This “holistic” division of power among the ruling parties has led to non-accountable government; individual ministers have become more powerful and with broader authority and functions; government does not function as a team, and the prime minister does not take responsibility for government as a whole or for its ministries (as was the case in the first government).

How the ‘Feudal System’ Functions in Practice

The strongest party (the DPS - with 53 MPs) controls 10 ministries (plus the Ministry of Defence, after the dissolution of Serbia and Montenegro). This party exclusively controls appointments in the two most powerful “institutions of authority”: Internal Affairs (the Ministry of Police and the Intelligence Agency) and Economic Affairs (two ministries: one for the internal economy and the other for International Economic

Relations). In the same manner, this party holds the Ministry of Justice, the Ministry of Science, the Ministry of Education and Sport, the Ministry of State Administration and Local Self-Management, the Ministry for Religion and the Ministry of Energy. As the strongest party, the DPS manages the largest (mainly monopoly) companies, like Telecom (and the telecommunications system), PTT (the Post Office, Telegraph and Telephone Company), “Galenika” (the biggest pharmaceutical company, whose director is vice-president of the DPS), Yugo-Import (an arms-trading company), etc.

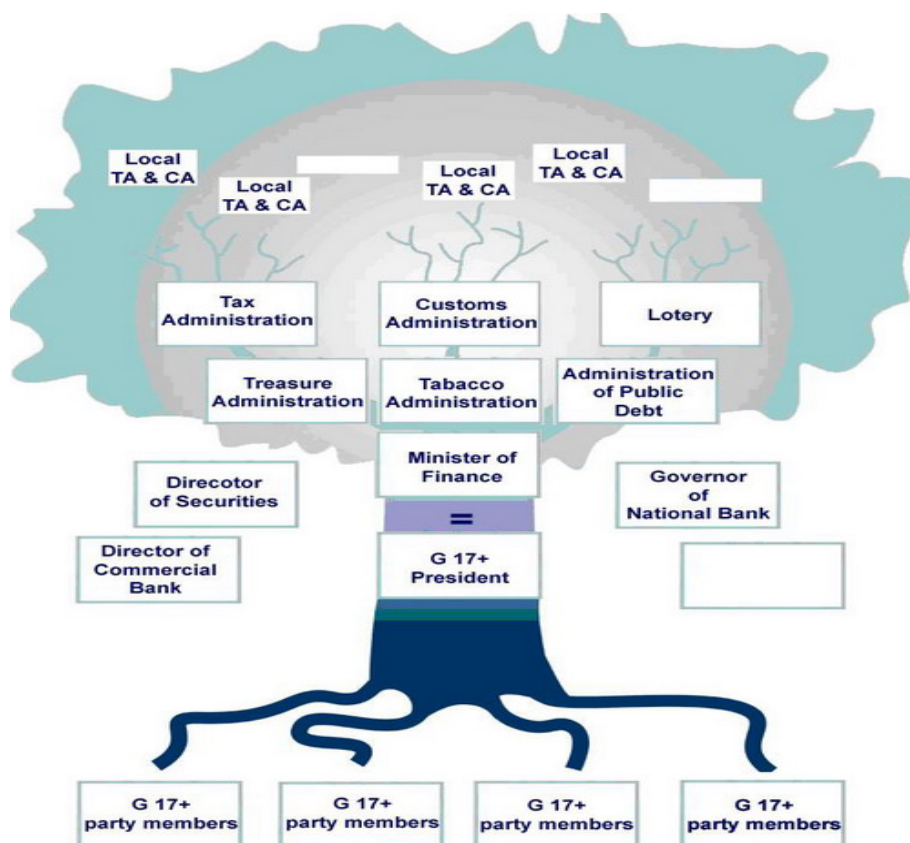
G17+ exclusively controls the Ministry of Finance, the National Bank of Serbia, and all financial institutions and money circulation. It controls the Ministries of Health and Agriculture as well. Both ministries have major (vertical) control of local appointments throughout Serbia, including those for the big monopoly company Srbija Sume (Serbian Forests), which is often described as a “state within a state”. The SRM-NS coalition³⁰ has been allocated the Ministry of Foreign Affairs and also Capital Investments as their most important ‘fiefdoms’. They have three more ministries: the Ministry for Diaspora, the Ministry of Culture and the Ministry of Commerce & Tourism. The NS (New Serbia) controls Serbia’s railways and Postal Savings; while the SRM controls Yugoslav Air Transportation (JAT).

The “confederation of fiefdoms” of the interior, economy and finance (where power lies) is, in fact, an exchange system for services and interests that serves the interests of the parties in the coalition (and their hidden financiers) on the basis of mutual blackmailing – this being the withdrawing of MPs from Parliament if a Minister (i.e. president of the Party) were to be denounced for corruption. This system serves to corrupt key state institutions: the police, intelligence³¹, the judiciary, financial and economic institutions, health care and national budget expenditure. The system also puts different ministries into the hands of one party in order to strengthen their power. For example, the Ministry of Agriculture received new authority to deliver credits directly to farmers without any transparent procedure being related to this; then, it got from the Minister of Finance (at the time vice-President of G17+) a tenfold bigger budget than this Ministry had had before. In this way it got huge discretionary authority - which was denounced in public of course - to be used to buy political support and votes.³² In conclusion, it is not an exaggeration to say that the ‘feudalized government’ has ‘integrated itself’ via the use of its own corruption.

The Case of the Ministry of Finance

To demonstrate the very peculiar structure of the Government of Serbia, i.e. which I have described as a confederation of 'power fiefdoms', I shall take a look at the Ministry of Finance and public financial institutions. G17+ has been allocated all forms of portfolio regarding finance. Its leader is the Finance Minister (He is the active President of G17+), and he has appointed "reliable" associates and party cronies to posts below him. The same party has control over central financial institutions and services. Primary among these is the National Bank of Serbia – even though it *should have* independent status! The party also controls other independent institutions, such as the Commercial Bank, the Securities Commission, State Statistics etc.; while the executive departments under the Ministry are, for example, the Tax Administration, Customs Administration, the Lottery, etc. (Picture 2). About 90 per cent of all positions' appointees come via party criteria and they are members of G17+. ³³

Picture 2: Tree illustrating G17+' Fiefdoms Picture – Tobacco, Director of Securities, Lottery, Treasury



Serbian Statistics

The striking fact here is that institutions like the tax and customs administrations, the National Bank of Serbia³⁴, Securities Commission, State Statistics, and other institutions that should be independent of political influence have become interwoven or tied up with party function(arie)s³⁵. The lack of transparency in the recruitment process for government and state institution positions – or in the way party/state functions are fused at the central level - has severely damaged government accountability.

Apart from horizontal (at a national level) party rule, this party also rules vertically by appointing the heads of local tax administrations, customs boards and other local administration units. Procedures regarding local appointments include proposals emanating from local party units. Employment opportunities as regards the heads of local tax administrations, customs, etc. are not publicly advertised or discussed officially; local party boards recruit local administration heads throughout Serbia.³⁶ Chosen candidates are sent to the Minister for approval. About 90% of director appointments at the local level for tax or customs office are from the ranks of G17+. In practice, horizontally and vertically all branches of finance and money circulation come under the control of one party, without there being any internal or external control, nor competition when it comes to appointments. Thus, two hierarchies – the party and the state - have overlapped! And this is how the closed, 'fiefdom' system of authority works.

The Case of the Ministry of Education and Sport (MES)

The following makes a comparison between the first and second post-Milosevic governments as related to party membership within the Ministry; and it looks at the appointed Heads of County Education Departments and also at institutional appointments and ones made for companies/commissions dealing with education in Serbia. Thus, it reveals the degree to which professionalization has been replaced by the party system in this Ministry:

Party Membership of the Ministry in the First and Second Governments:

Positions	Government I	Government II
Minister	CAS	DPS
Vice-Minister	DP	DPS
Deputy Minister	Non- party	DPS
Deputy Minister	Non- party	DPS
Deputy Minister	Non- party	DPS coalition party
Deputy Minister	CAS	Unknown

Composition of the Heads of County Educational Departments, by party affiliation:

Counties	2000/ Minister/ CAS³⁷	2004/ Minister/ DPS
	Heads	Heads
Sombor	Non-party	DPS
Zrenjanin	- -	DPS
Novi Sad	- -	DPS
Pozarevac	CAS	DPS
Valjevo	DP	DPS
Kragujevac	Non-party	DPS
Nis	CAS	DPS
Zajecar	DC	DPS
Leskovac	Non-party	DPS
Beograd	CAS	DPS
Kosovo-Ranilug	Previous	DPS
Kosovka Mitrovica	- -	Previous
Cacak	-	DPS
Krusevac	-	DPS

When the new government came into power, the Heads of County Education Departments appointed in 2000 were *all* dismissed (except for one, in Kosovo); the turnover for this middle-ranking position was one hundred per cent! *All new* appointments came via the dominant party for this party fiefdom (the Minister's Party is the Democratic Party of Serbia - DPS). Since persons' professional reputations were much lower, such a turnover meant that more-qualified people were being replaced with less-professional administrators. This change reflected changes in the Ministry itself: the best experts available in Serbia were taken on as leaders of educational

reform in the first government - yet they were all then thrown out to give places to “reliable” people from the new, dominant party.

The same type of one-party control criteria can be found in all other educational institutions: The Centers as well as semi-independent institutions (founded by the Ministry) devoted to the development and evaluation of the quality of education, the professional training of teachers, etc. were reorganized. The directors of the Centers (experts and non-party people) were dismissed and replaced with less qualified people from the DPS.³⁸ Public companies founded by the Ministry - such as the very profitable Text Book Publishing Company - were given to the DPS.

The same party (DPS) got the position of President of the Commission for Education in the Parliament. Further down this hierarchy, i.e. going down to the directors of schools, official procedure theoretically empowers schools boards, composed of 9 people (3 parents, 3 school employees, and 3 from local government), to elect an administrator - and then send the chosen candidate to be approved by the Minister. But, in practice, this is not so, because the three people from local government - who are *also* from the party – just *impose* the selection of a school director in many cases.³⁹ The forging of party criteria for the appointing of directors of primary and secondary schools all over Serbia has led to numerous public conflicts between the Minister and schools, with the latter not wishing to accept non-qualified directors who have been forced upon them. Only when schools threatened to go on strike owing to the political appointments coming from the Ministry were they able to win the battle for more qualified and professional directors of schools.⁴⁰

The analyzed pattern of “party recruitments” does solely pertain to the Ministry of Education or the Finance Ministry. Upon investigating the individual appointments of directors at a local level - in schools, libraries, cultural centres etc. - and noting the number that were appointed by the central government, it was evident that non-party candidates have had almost no chance of getting a director’s position in a local-level institution⁴¹. An analysis of some individual cases has shown that at the very moment when one party is “conquering” a ministry, local party functionaries start insisting, to party headquarters, that they get the leading position against other candidates in the competition. The party administration then prepares the case for the Presidency of the Party so that to its ministers can be influenced to appoint “our people”.

The described and widespread practice to give almost full benefits to a “party candidate” has set on the margins both fair competition and professionalism when it

comes to management positions. By preventing competition and weakening degrees of professionalism, corruption has become protected within the political/party hierarchy, for it has been influenced from top government positions. And, unfortunately, this is a general rule, one that is being used by/in all ministries and middle administration positions in county institutions and companies, right down to local level office.⁴²

*Public Companies*⁴³

Privatization in Serbia is only half finished. In total, about 50 percent of companies are still owned by the state or are a mixture of state, “social” and private property. When taken together, 40 percent of the total workforce lives in the unreformed economy.

The most important aspect of state capture is the ‘seizure’ of public companies; and parties in the ruling coalition manage these exclusively. Public property has thereby effectively been converted into “party property”, and is managed in its interests. And a huge amount of assets has been captured. The 17 biggest companies founded by the government of Serbia are managed by the parties that comprise the ruling coalition at the National level: management boards and persons who might be presidents and directors are sought out - and, via a quota system, such positions are then divided up among each of the ruling coalition parties, who will then make appointments to such management positions as if the companies were their *own* property. All other public companies – about 500 – are in the hands of the ruling coalitions at a local level (see box below⁴⁴).

State ownership of public companies is still extremely large and privatization is still in its beginning stages, due to the resistance of the political parties to lose their power over such extensive resources. According to NBS (National Bank of Serbia) data for 2004 (data for 2005 have not yet been released), financial reports were submitted by 521 public companies employing 190,000 workers (i.e. 16% of Serbia's workforce). The value of their capital stood at 932 billion dinars and their collective losses at 21 billion dinars.

The 17 public companies owned by the Republic of Serbia had a gross income of 713.21 billion dinars, which is 18.7 per cent of the total income of the Serbian economy. The net profit of profitable companies was 32.59 billion dinars which was double the amount earned in 2004. Total losses of companies that lost money were 33.24 billion dinars, which accounts for 15.8% of the total losses of the Serbian economy.

These figures should not obscure the fact that 45.8 percent of the total capital and 43.5 of the permanent resources of the Serbian economy are concentrated in the 17 public companies. If this capital produces only 18.7 per cent of the total revenue of the economy, then the conclusion can not be positive about the productivity of the public companies. These companies employ 11.4 percent of the total workforce. Their salaries tend to be higher than average because they account for 16.7 percent of the gross wage expenditure for all employed people in Serbia. This difference in salary is found almost totally in the top management levels.

There are many indicators that management-hiring decisions in public companies are not based on criteria of merit, experience or qualifications; nor are managers held responsible for any failures during the time of their tenure. If the government wants to keep prices low (thereby producing losses) the party-appointed managers must comply. This is the case with electricity prices, which are lower than in the rest of the region. The justification for controlling electricity prices (or other ones) is the socially-based argument of needing to subsidize the salaries of the population, which are generally low; it also serves to show that inflation is (nominally) lower; though the low prices have also given substantial benefits to the private interests of party-related firms that have a business selling electricity abroad. Such discretionary decisions made about public company prices can bring enormous profit to the tycoons who finance ruling coalition parties.

Since public companies are the political-power stronghold of the ruling parties, they are used in many different ways. Benefits for the party include companies being used for the employment of party members and for rewarding party functionaries for their 'loyalty' with the extra incomes coming from directorships. Parties may also get free, direct services, such as publicity for their campaigns and the publishing of journals and advertising materials, the delivery of gifts to socially deprived persons in the name of the party, etc. They even serve to control the media: the biggest public company,

Serbia's Electro-distribution, owns 14 percent of the shares of the daily newspaper *Politika*, and makes use of public money to keep government control over the news media.⁴⁵ The Government has direct control over the public company Radio-TV of Serbia (RTS), even though it is supposed to be an independent information-giving public service⁴⁶. In a somewhat different way, the Government controls *Vecernje Novosti*, the most popular daily – for it once prevented an independent person from getting a majority stake; instead, it was sold to tycoons close to the government and its ruling parties. On the local level, ruling parties control the public media. The most recent big case was the dismissing of the editorial board of the weekly papers in Zrenjanin – which was done by Kostunica's DPS, which had gained control of the municipality⁴⁷.

The 'right' to appoint directors as well as to actually manage affairs is not subject to any public control regarding the use of resources or salaries for the management board. Nor is there any independent external auditing of the real situation in a company. When asked about the salaries of top management, the directors of public companies chose not to answer, saying that it was a "secret".⁴⁸ Detailed research on salaries in public companies shows that the average incomes of employees are not significantly higher than in other enterprises. Incomes are, however, much higher for *top management* board members - who, in individual cases, receive more than 500.000 dinars per month (6 thousand euros, in a country where the average salary is 200 -250 euros). Incomes for the members of managing boards vary from company to company, yet they can be two or three times the average managerial salary. The actual benefit is even greater, though - for it is not merely a job but a position that can be held *in addition* to other regular jobs or positions.

Party-nominated management boards are not there to control and supervise the business of the company or to work in the public interest – instead, they are there to "close their eyes" when their own or their party's interests are at stake. Public companies are a nest of corruption and cause a loss of public money, a phenomenon that can be changed only via a process of privatization, it would seem. The IMF suggests that real reforms will start when public companies (so often monopolies) open themselves to an adequately designed and controlled privatization procedure⁴⁹. Only then will real reforms in Serbia be able to take place.

The Local Level: The Case of the City of Novi Sad

The city of Novi Sad has been chosen as a case study to demonstrate the link between party privileges and the executive employment turnover within municipalities and their public companies, utilities and services. This city gives a clear example of party shifts after local elections occur, as the Serbian Radical Party (SRP) won the last elections, in 2004 (with two coalition partners: the Socialist Party of Serbia and the DPS), after the Democratic Party (DP) with its coalition partners had dominated the city for 8 years. Radicals got 35 elected members in the City Assembly and, with their partners, had a majority of 42 representatives (out of 78 assembly members).

State capture of all positions in public offices is the model operating at a local level as well as at a national one – though on a local level it is more easy to see how elected people get hold of jobs in public companies and how nepotism operates along with forms of cronyism.

The Structure of the City Authority

Government/Secretariats	City Council 2004-*	City Council 2000-2004
Mayor (directly elected)	SRP	LSV ⁵⁰
City Architect/Urbanism	Quota of SRP	LSV
City manager	SRP	-
Budget and finance	SRP	DP
Communal activities	SRP	DP
Transportation	SRP	LSV
Social protection	SRP	CAS
Sport	SRP	DP
Environment	SRP	-
Culture	SRP	LSV
Education	SPS	Reform Party/Vojvodina
Economy	SPS	RP/Vojvodina
Administration and legal affairs	SPS	DP
Health	DPS	CAS
Information	-	Social democratic party (SDP)

The table shows the government structure in relation to the party-related distribution of “ministries” and to positions in local government. It shows that there was a 100% turnover after the local elections; i.e. one party (or coalition) enters the local

government and takes over *all* public positions – and after the follow-up election, another one comes along to take over their positions. This clearly shows that no degree of job-related professionalism will be needed.

Costs, here, in terms of managerial capacity are enormous. As soon as one group of managers gets the knowledge and experience to lead health or education, for example, it may soon be thrown out and replaced after subsequent elections. Hundreds of people who were given such appointments by the Democratic Party before the last elections had to then find another job⁵¹ - and it will be the same with Radicals when they lose an election and a new coalition comes into power in Novi Sad. Investments in the training of local government cadres are wasted if they do not establish professionalism and related criteria within local institutions. Since local government and services are closest to the needs of the citizen, the practice of totally politicizing local operations damages the public interest - as if local governments existed only to employ party cronies, families and their friends.

The “turnover” of power is used in several different ways for the benefit of party cronies, families and friends – and against citizens and the public interest:

- To obtain leading positions in public companies. Of the 42 members of the Assembly who were elected, 24 got jobs in public companies in a position of director or in a professional post. Three members of the City Assembly elected from the DP list left their party and joined the Radicals’ majority for family reasons (i.e. to protect their husbands from losing directorship positions gained in the previous distribution of management positions in public companies).
- More than 1000 people got jobs in the city administration and public companies without there being any public advertisements or competition forthcoming. During the first 13 months of the Radicals’ rule, 965 people from their party were employed in public companies and related utilities (while the DP employed 654 people during the 8 years of *their* rule). Many such positions were based on nepotism (family and friendship ties), which of course gave rise to numerous public scandals. The mayor of Novi Sad reacted to nepotism scandals by delivering a special announcement, namely that she is “against nepotism and any conflict of interests”, and she requested that appointees “display public awareness and give up positions obtained in this immoral way”. Yet nothing changed, for all the “immoral positions” have remained in the hands of family members, party cronies and friends.
- More than 30 people without having the required educational qualifications but solely via family and party ties obtained jobs in the city administration, in leading positions; such jobs were in public companies/utilities (there are 15 such public companies in the city, in the hands of the ruling coalition) or in institutions of culture, dealing with urbanization, museums, school boards, etc.
- The Radicals and their coalition partners (DPS and SPS) who ‘divided up’ the public companies have ignored previous practice: that the president of the

managing boards of public companies (and institutions) and the president of monitoring boards *must* be from different parties. This practice had enabled some elementary internal control to be established – now, however, both the president of a managing board and the presidents of the monitoring bodies are from the same party.

- The dramatic lowering of the qualifications of appointees in the local government and companies has led to huge losses which have to be covered by the city budget (i.e. money gained from taxpayers). The financial reports of city companies have shown that they have been making less and less profit. The city transportation company has had a five times bigger loss (deficit) than it had in 2004 (when the Radicals came to power), while the biggest company (The Sport Centres of Novi Sad – SPENS) has suffered losses for the first time in its history. The City Assembly then passed a budget revision by which an additional 750 million dinars in subsidies was approved to finance city companies. This means that more than half of the city budget is being used to support or shore up public companies.
- The salaries of public company directors have gone up to such an extent that 44 of the directors of the public companies/institutions (as well as their advisors and deputies) were on the list of Novi Sad's millionaires. The Director of the Public Transport Company, which has had the biggest deficit, has the largest salary! The second on this list is the Director of the Institute for Building in Novi Sad; while third is the Director of the Business Premises Areas (and so on). All directors bearing the greatest salaries are high functionaries of the SRP, and some of them are also members of the National Parliament.

In conclusion, data for the City of Novi Sad has demonstrated that state capture and its feudal mechanisms, something instigated by the ruling parties, operates on a local level in an even more visible and blatant way; and this has severely corrupted the public sector at the expense of citizens and the public interest.

3. Degradation of the Serbian Parliament and the Multiple Functions of MPs ⁵²

Serbia has a proportional representation electoral system: the whole country is one electoral unit, and each competing party puts forth its list of candidates for the 250 seats in the Parliament. This electoral system usually produces coalition governments because no single party is able to gain a majority. The parties' top leaderships (mainly the president of the party) have been able to take control of Parliamentary seats, first by composing the candidate lists and then by deciding which candidates will enter Parliament after the elections, regardless of their ranking on the list. Arbitrary selection

of who will go into parliament is a relevant corruptive mechanism associated with state capture, yet electoral law allows it. Then, the persons chosen to enter Parliament are obliged to sign blank resignations prior to their entering, this being is an illegal 'invention' of parties. These blank resignations are kept by the party leader, who will make use of them if needed. If an MP is disloyal or does not vote as instructed (and this is especially true for ruling party MPs), s/he is stripped of his/her mandate and is thrown out of Parliament. This illegal practice was introduced by Kostunica's minority government;⁵³ and it was illegal because (on May 27, 2003) the Constitutional Court (responding to the complaint of Kostunica's Democratic party of Serbia, which was stripped of all mandates) decided that the mandate belongs to an *individual* MP, thus establishing the "independent mandate" principle. This decision limited the power of the party, though it opened up the opportunity for the misuse of mandates (e.g. with persons "selling mandates" – where mandates were bought, when needed, either to keep the government's majority or by the opposition to try to overthrow the government). Not all cases of "disobedience" fell into this category⁵⁴, but the illegal expulsion of MPs became the "method" used by the government to protect its majority and Parliament's composition. The "method" was implemented via the Administrative Board of the Parliament, which is made up of ruling parties' representatives.⁵⁵

In trying to eliminate corruptive mechanisms in the Serbian Parliament, the Venetian Commission on Serbian Electoral Legislation suggested that electoral legislation in Serbia needs to be changed to make it clear that (a) mandates belong to individual MPs, and (b) parties and coalitions must announce in advance the numerical ordering of the candidates who will enter Parliament from the lists - instead of being allowed to choose after the elections which candidates will actually get a mandate. Under current practices, citizens never know *who* they are voting for. Yet instead of enacting the suggested Electoral Legislation-type reforms, the new Constitution - one created by the agreement of the four leaders of the parties - clearly states that the mandates belong to the *parties*. And ratification of the new Constitution made it more difficult to eliminate corruptive mechanisms from Parliament.

To cement their obedience, MPs are corrupted by being given money for trips they have never made and for attending Parliamentary committee sessions they never went to. Although the main bribery mechanism lies in the opportunity of an MP to accumulate offices: MPs can simultaneously be mayors of cities (or municipalities), president of the regional government⁵⁶, or a member of local government ("council"),

while also being on the managing boards of funds or agencies; they can be elected as assembly members at all other local levels (city and provincial). They can be business advisers, city land bureau directors and members of management boards, and/or presidents or directors of public companies. The only limitation for an MP here, as imposed by the Law on Conflicts of Interest (passed in April, 2004), is that they may not have a managerial position in more than one public company at the same time. By the same law, MPs explicitly have the right “to keep their managing rights in other business enterprises if this does not influence their public functioning or their impartial and independent performance”.

Holding multiple functions allows MPs to have several sources of income (see Chart 1). It is shown in Chart 1 that 61% of MPs have other functions, of which 44% have one extra function and 17% have two or more. Getting the most lucrative post in a public company is possible only by a decision being made to this effect by the party president. This gives the party presidents great power by allowing them to bestow ‘rewards’ upon party functionaries. The richer the public company one gets, the more he/she will gain by having a place on the board of management.

Chart 1: MPs multi-functions - Total MPs=246

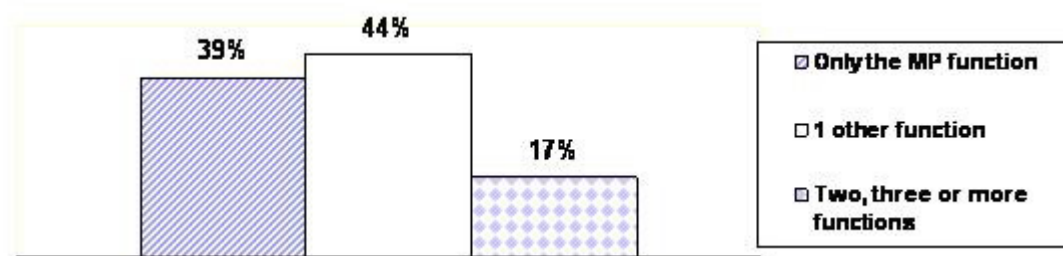
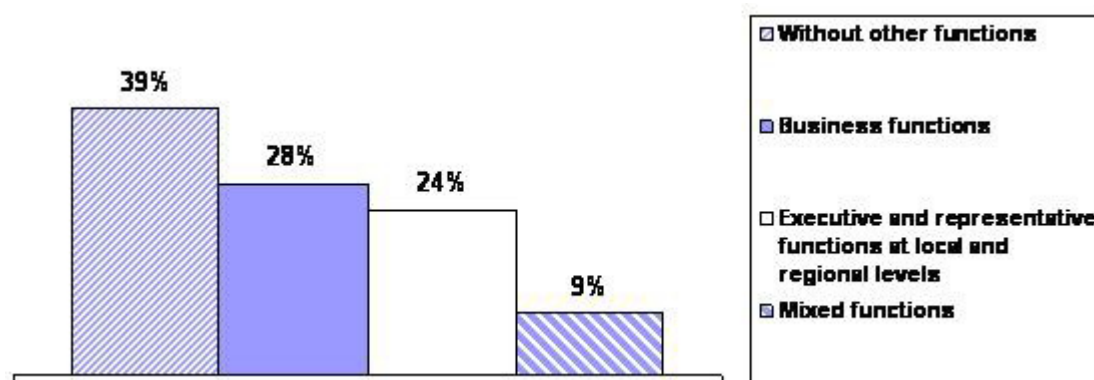


Chart 2: MPs multi-functions by content - Total MPs=246



I have identified 23 individual MPs who have 4 public functions; 17 mayors of the cities are MPs⁵⁷. When some party leaders were interviewed about the reasons for the accumulation of functions, the answer was that the mayors of cities and municipalities, and the directors of city land bureaus and other institutions want to be MPs for the immunity they enjoy. Another reason for function accumulation in few hands only comes from the oligarchic structure of the parties: it is easier to control a small number of people than a wider group with a dispersion of functions. Some MPs hold all types of representative role (in cities and provinces) below the National Parliament level. Being liberated from the restrictions of the Law on the Conflict of Interests (something overseen by their parties) and enjoying a widely-defined immunity, such MPs can ensure 'state capture' in a literal sense - as the 'seizure' of laws to the advantage of corporate business via influential political links with Parliament. That is, they have the privilege of being "legally bribed".

Regulations on conflicts of interest serve to set standards as regards public office performance, thereby building citizen confidence in state institutions and preventing multiple functions and the resultant corruption. In essence, these regulations put limits on the accumulation of functions by public officials (which, as said, always leads to a concentration of power in society and a degrading of the public interest). If public officials have many public roles, they cannot comply with the real requirements of *any* of the roles, however - thus damaging the public interest.

The Law on the Conflict of Interests passed in Serbia has not met public expectations for the following main reasons:

- Many public functions were not covered by this law, including the roles most likely to be exposed to corruption, such as positions in the courts, prosecution offices, police, customs, tax administration, intelligence and security organs, jails, as regards health and social funds, and concerning many other important functions;
- The law allows for an accumulation of job postings;
- The Republican Board for Preventing Conflicts of Interest is not professional; it does not set criteria for the election of its members - even education requirements do not exist; and the competences required are not defined (except as regards the three job positions for the Supreme Court). Members of the Board have other jobs in the private and public sectors and they make decisions ad hoc (i.e. they meet only from time to time, the Law does not say how often the Board should meet and according to what procedures, etc.) How they are elected also leads to questions, for the Supreme Court elects 3 members, the Bar Association 1 and the National Parliament 5, at the suggestion of the Serbian Academy of Sciences and Art. All this gives SASA a de facto majority on the Board;

- The Law does not contain sanctions to deal with conflicts of interest. The Board can only give a non-public warning, with this being followed by a public recommendation that a law violator resigns if the non-public warning does not have any effect. The property of such a functionary will remain a public secret.

4. Regulatory Institutions, Laws and Anti-corruption Policies in Serbia: An Overview with Special Attention being given to the Law on the Financing of Political Parties

From the point of view of 'state capture', we will take a look at what Serbia has been doing to create independent regulatory institutions and to put into place anti-corruption policies; and we will investigate how far it has proceeded towards controlling the political/governing process and the powerful "political class" - and towards reforming the economic process so as to reduce and eliminate monopolies and the special privileges of the business elite (tycoons) based on their political influence.

If Serbia wishes to join the EU integration process, she must build up strong anti-corruption institutions whose target must be to improve the performance of the public sector in general - rather than just to reduce corruption per se. She needs to develop a professional and merit-based civil service as an important step in the long-term process of reducing corruption; she will have to establish a supreme and independent auditing institution to control budget expenditure and audit how taxpayers' money is spent (this institution should control all public budgets, including that of the Serbian National Bank and also the managing of public money, public companies, political parties etc). She should establish a functioning Ombudsperson position and Anti-corruption commissions and agencies, and also build up a wide network of regulatory institutions and monitoring boards that can strengthen society's capacity to prevent the unwarranted influence of state organs and political voluntarism. Effective legislative improvements are also needed with regard to A) free access to public information, B) the elimination of conflicts of interest (previously commented on), C) the promotion of free competition, D) the financing of political parties, E) regulations pertaining to the One Stop Shop concept, and so on.

Serbia has started to put into place the above-mentioned institutions, though its policies have not been clear or decisive - and the results are no more than modest. The supposed regulatory institutions that have been formed all have grave deficiencies due to distortions emanating from the degree of political influence. Because of the almost total political management of so-called independent agencies, it has even been suggested that it is better to overtly return their functions to the government in order to clarify *who* is really responsible. Anti-corruption measures have been arbitrary and rushed, using selective arrests⁵⁸ and phony publicity; they have been ad hoc, having been created and then abandoned in the space of days. One indicative story refers to the forming of a specialized Anti-corruption Agency, which Serbia has an obligation to create according to international conventions (the UN and the Council of Europe) she has signed. The first draft for the specialist Anti-corruption Agency was created in 2002 (with the cooperation of the OECD and the Council of Europe). Yet the present government has delayed the drafting of a Law defining how the Anti-corruption Agency will operate and what it should be responsible for. Only recently (October, 2006) did the public learn that the Government has actually come up with a relevant proposal – though the related law will not come into effect until at least October 1, 2007. Amongst the responsibilities of this Agency will be control of the financing of political parties.

I will now give a brief overview of some of the Anti-corruption institutions and laws that do exist, giving special attention to the Law on the Financing of Political Parties because of its key role in being able to handle the phenomenon of state capture and the links between political party leaderships and the economic elite.

1) Almost nothing has been done to introduce professional requirements to connect with specific positions/appointments. An improvement was made in the state administration after the passing of the Law on State Administration (which came into effect in July, 2006). According to this Law, deputy ministers will be professionalized and positions will be advertised. But, as always, the problem is implementation. Contrary to the declared intentions of the Law, the Government has begun organizing an almost total politicisation of staffing from the top to the lowest positions in the administration. The staffing initiative began when new elections were announced (for January 21, 2007). All of a sudden, in November 2006,⁵⁹ a large number of advertisements for “deputy ministers” appeared in newspapers. The intention here was

to transform their party cadres into “professional civil servants” and to entrench them in the government administration after the elections. Along with this typically “political” way of implementation, the Law also has other deficiencies as it does not cover public servants in the police, customs, security, in the tax administration etc. Experts now say that there is no “political will” in the country’s politicians to give up party influence over state administration – for such a change can only happen if Serbia takes steps towards EU integration and applies the policies and procedures that are required for membership.

2) In 2005, Serbia passed the Law on the Institution for the State Audit, though such an Institution has not yet been created! Serbia is now the only country in the region that does not have a State Audit Institution. In public, the predominant opinion is that there is no readiness on the part of the Minister of Finance (and the government) to permit auditing control of any state institution, or of the national budget, financial statements coming from the Government and its ministries, local governments, public enterprises, political parties (etc.) In Serbia there are no well-qualified auditing companies (if EU standards are taken as the point of reference). The best persons that do exist, knowing that a state audit would be greatly exposed to political influence and lobbying, do not want to undergo the risks involved if competing for such a job⁶⁰.

3) The Ombudsperson Law was passed, but no-one has yet been appointed to the position. In Vojvodina an “Advocate for Citizens” exists, and a similar position was recently created in the City of Belgrade - though on a national level the situation has remains stagnant. As is the case with other important institutions, the Ombudsperson has become a Constitutional category, which fact may help in its future functioning.

4) Anti-corruption agencies and commissions have not yet been formed although the National Anti-corruption Strategy was passed by Parliament in December, 2005. What still exists is the Anti-corruption Council, a body composed of civil society representatives, which was formed during the first transitional government and which will be dismissed since the new (aforementioned) Agency is to take its place. There are a couple of NGO organizations that try to deal with corruption. The most prominent and active of these is Transparency Serbia.

5) Regulatory institutions are being developed in Serbia though they are not independent of the executive or from political and business influences. Their lack of

independence has destroyed their reputations from the outset. Each institution has the same problem: they have been purposely designed by law *not* to function. The most scandalous case of 'fixing' the work of such an institution relates to the Republic Radio-diffusion Agency (RRA), and involved the "neutral" distribution of national frequencies to TV and radio stations. A whole book might be written about the scandalous operations of the RRA. Other less well-known examples include agencies dealing with competition policy and the 'Anti-monopoly Commission'.

Because of the domination of monopolies in Serbia (she has received the lowest grade – 1 - for competition policy)⁶¹, it has been said that Serbia does not have *any* competition policy. Most of the public companies are monopolies; private firms also seek out privileges in order to avoid having to indulge in market competition (most commonly, protection is gained by buying laws via connections in the government). To curb monopolies, a Law on the Protection of Competition was passed last year. An "Anti-monopoly Commission" was additionally established (after a long delay). The law will not be effective, however, owing to its deficiencies: it does not penalize market domination but only "misuse of one's position on the basis of a reasonable and discretionary estimation".

6) The latest draft law on foreign investments included the concept of the One Stop Shop, and this is another example of the severe distortion of a good idea. The World Bank made serious remarks on how this law would open the door to corruption wide because of its deficiencies. In law, the One Stop Shop will be virtual – i.e. it will not be an *actual* office. Each municipality (there are almost 160 in all) will be a One Stop Shop. The actual 'shop' will simply be the discretionary judgment of the mayor, or, for larger investments, the Economics Minister. The One Stop Shop may be at the service of an investor, or he can be deprived of it, depending on the discretionary decision of the mayor or Minister, and disregarding what the law says. Discretionary decision-making can only, it would seem, provide an open invitation to take on board pay-off requests.

The Law on the Financing of Political Parties

The Law was passed in 2003 but it did not meet up to expectations when it comes to preventing secret, under-the-table party financing - now a tradition in Serbia (since introduction of the multi-party system in Serbia in 1990). The government and parties

are supported by big capital contributions, and it is a well-known public 'secret' that tycoons finance all of the major parties. Individual donations are officially limited as regards the 'regular' functioning of a political party to 10 average salaries from individuals (per calendar year this amounts to 2,600 euros) and 100 average salaries for organizations (amounting to 25,000 euros). For election campaigns, the donations' limit is determined in relation to the funds coming from the budget (around 350.000 dinars, and 1.4 million dinars for an ongoing campaign). Each contribution must be recorded in the party's accounts, and anonymous donations are forbidden. In practice, however, the Law is not adhered to, and the names of donors are not disclosed even though, by law, each donation over 100 dollars should be reported along with the name of the donor.

What is needed is a transparent model concerned with financing parties and an efficient checking mechanism. Serbia must pass such a law; for there are many good practices that can easily be adopted and implemented. Yet the 'financing law' will be useful only if Serbia passes a law on political party organization - which is currently lacking. The law now in effect is the old socialist law about 'social-political organization'. This law is certainly required because there are more than 400 parties in Serbia, and any serious intention to have controls here must start by clarifying what constitutes a political party and what the procedures for its creation and activities should be.

The main problem of the existing Law is that it does not provide for the establishment of a separate institution to monitor the funding of parties, nor a separate body charged with supervision. There now exists two control bodies, ones that should not be connected with each other: the Republic Electoral Commission for campaigns, and the Parliamentary Board of Finance (to control regular party activities and financing). This (supposed) control body is made up of party members who will submit financial reports – which actually means that the parties end up *controlling themselves*. Although these organs can employ professional reviewers, they abstain from doing so - for two reasons: first, they lack the political will to really control party financing; and second, these two bodies (the REC and PBF) do not have a budget to pay such reviewers. In addition, the two bodies do not have any legal authority to start procedures against a party that does violate the law - they can only initiate a process that must then be taken over and dealt with by other organs. This, in practice, makes the control of parties via the law non-existent⁶². The law suffers from other deficiencies,

too - such as the stipulation that 20 percent of the money from the budget set aside for party financing should be distributed to parties at the *beginning* of any campaign, and 80 percent at the *end* of the campaign (according to their degrees of success in the election). This means that parties will need to obtain money from other sources because they need money at the *beginning* of a campaign. Uncertainties about the Law and especially its weak implementation have paved the way for the undisciplined behaviour of political parties; the majority do not respect this law, and do not submit completed financial reports on time; and no parties have published their financial reports or made them available to the public (even though this is required by law).

Despite the parties having avoided transparent financial dealings by taking advantage of the weak control mechanisms had by this law, they have nevertheless been able to get between 5 and 7 million euros a year (provided for by law) from the state budget; though there are many indications that politicians have systematically been creating 'loops' of companies via which they have acquired a lot of their money⁶³. Under the same political influences the supposedly independent, regulatory institutions (commercial courts, enterprise registries, stock market and the media) have had to make compromises on their ability to control corruption.

The delay of the government to form a specialized Anti-corruption Agency that would effectively control party financing (together with an Institution for State Auditing) means that the forthcoming elections can only occur under the existing - deficient - control mechanisms⁶⁴.

The preceding analysis confirms that Serbian Anti-corruption policies are weak and, as such, contribute to state capture and corruption. It also shows that if there is *no political will* to curb the corrupt state, *no law* will ever be good enough – i.e. the law may be perfect, though it will not function if there is no will for it to be implemented and enforced, or for it to actually *work*.

5. A Survey of Public Opinion about Corruption and State Capture

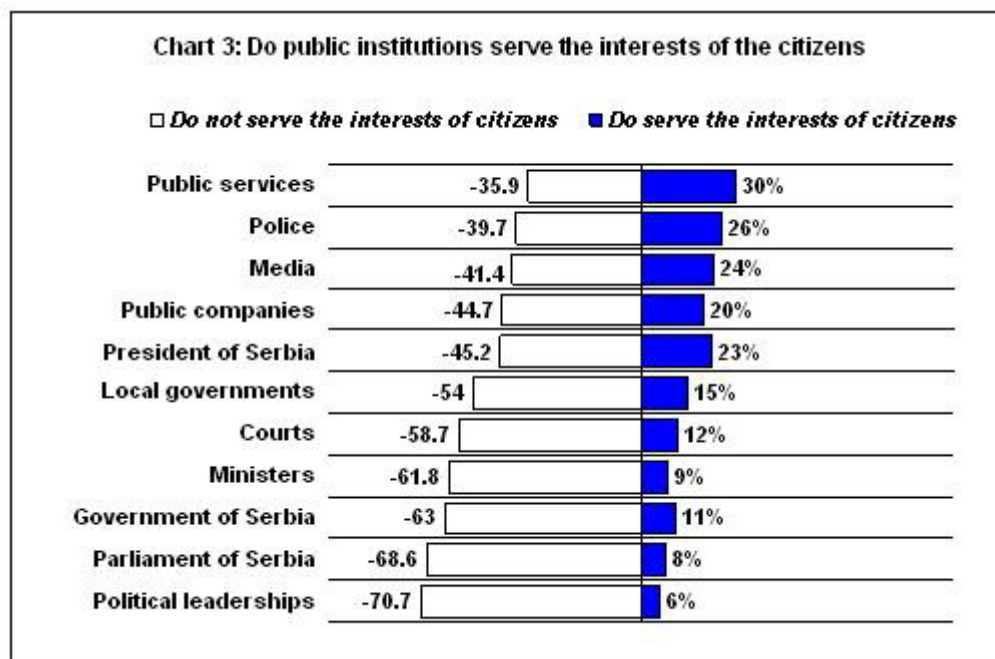
Objective data relating to state capture has been analyzed as a 'framework' to show that there is indeed ongoing, large-scale corruption. As regards anti-corruption policies it is essential, however, to know what citizens, as the principle stakeholders, actually think about mechanisms leading to and resulting in state capture - seeing how much they trust state institutions, how they assess "party" job allocations for the public sector, what they think of the multi-functions of politicians and how they think corruption might be fought.

I have divided the survey data associated with the public opinion of Serbian citizens into three sections: (1) public concerns about corruption and public confidence in the main state institutions and in party leaderships; (2) assessments of existing criteria for job allocations/leading positions in public office - and what criteria there should be, also looking at people's approval/disapproval with regard to politicians' having multi-functions (i.e. more than one job position); (3) tolerance and awareness of corruption in public office, additionally noting what citizens think the most efficient strategy for fighting corruption in Serbia might be.

Concerns about Corruption and Confidence in Institutions

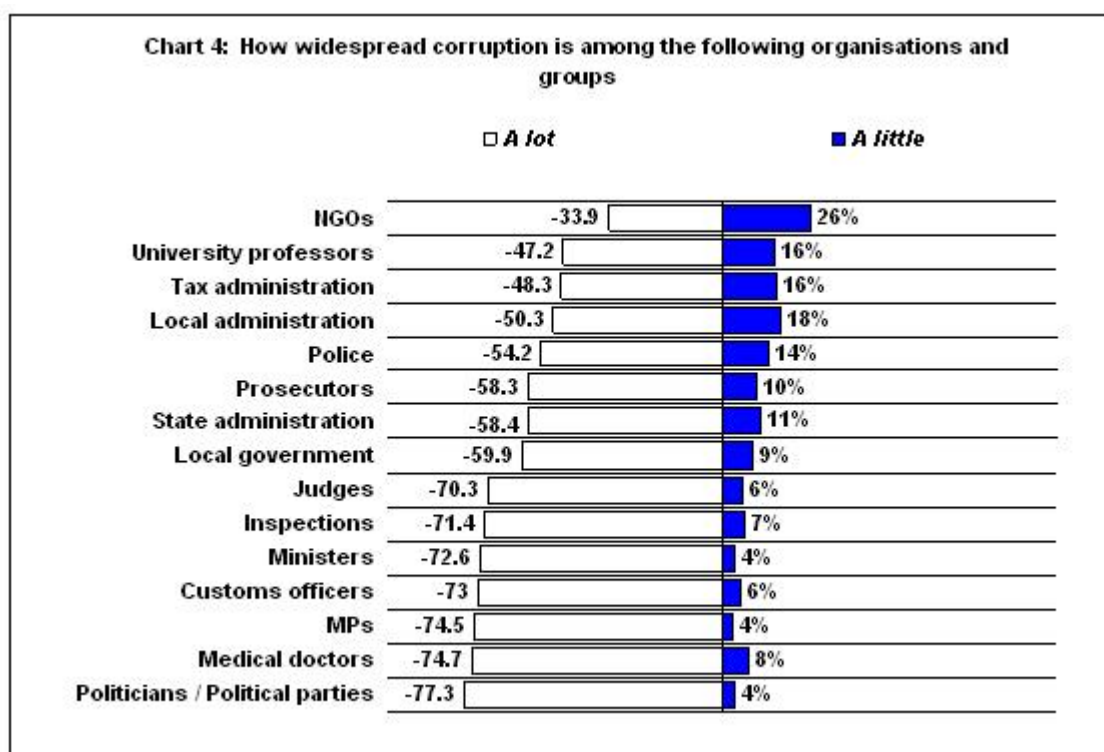
Serbia's citizens think that corruption is one of the four most important issues that the country needs to handle. When people were asked to spontaneously choose the main problems Serbia is facing, responses were the following: unemployment (55%), low standards of living ((37%), Kosovo (23%), and corruption (28%)⁶⁵. Major awareness of corruption has had a noteworthy effect on the degree of trust people have when it comes to the principal state institutions. Mistrust in such institutions and a perception of their being almost totally set apart from the interests of citizens are alarming phenomena. Answers given to a question of 'which public institutions are working in the interests of citizens and for the general public good' show that there is an extremely low amount of confidence had in these institutions: only 6% of persons think that political leaderships are working for the public good; Parliament gets only 8 percent affirmative answers, ministers get 9%, government 11%, the courts 12%, local

governments 15%, public companies 20% (etc.) All institutions receive a dramatically more negative 'trust vote' than positive (see Chart 3 below).



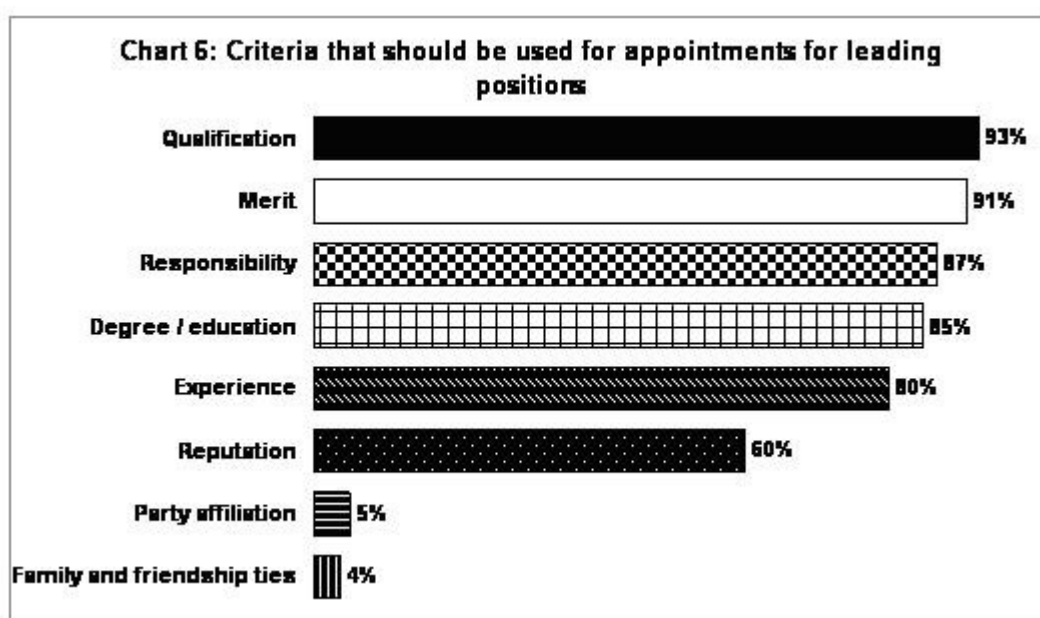
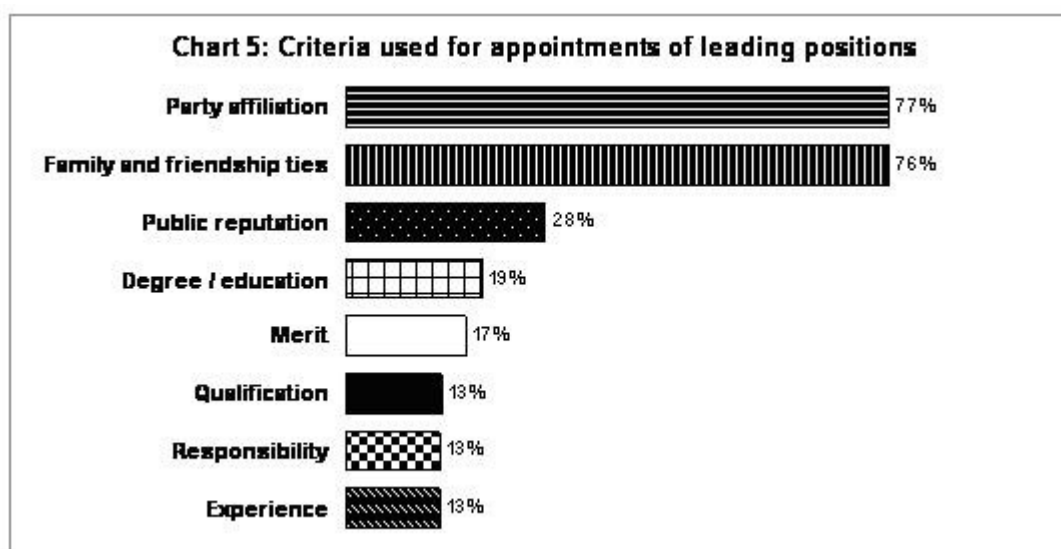
For whose interests are these institutions and organizations working? Using a scale of 1- 5, for each selected state office the results are extremely worrying. A great majority of people, 71%, think that state offices simply operate *for themselves*; 70% say that they work for their parties, 69% say they work for their relatives and friends - while the same amount think that they work for “powerful people and businessmen”. Only 13% said that state offices work in the interests of citizens!

In response to direct questions about the public organization or office in which corruption is most widespread (using a scale of 1-5 for each institution), 77% think that political parties are the most corrupted; tied second, with 75%, were doctors and MPs - and so on (see Chart 4).



Job Appointments for Public Office

People have realistic perceptions regarding how positions in public offices are filled - thus confirming this author's research data. When asked about how appointments should be made, the response was almost totally opposite to what went on in actual practice. Persons indicated that merit-based appointments should be the most important criteria used – more than 90% said that it should be the first criteria taken into account (Chart 6). A dramatically different picture was given about how they saw the actual reality of practice. People said that party membership and family/friendship ties are the most oft-used criteria (77% and 76%, Chart 5), while merit and qualifications play a much lesser role in any selection process.



Perceptions concerning recruitment procedures related to a job vacancy in public office show that 49% of persons think that advertisements for public office positions do not exist, and that the parties independently allocate these positions to their own people in the context of party coalition agreements. A total of 40% think that when positions are advertised, the competition is 'fixed' in advance; and only 8% percent of interviewees thought that public advertisements for positions - and an opportunity to apply – would be accessible to everyone.

The general public sees the holding of multiple functions by politicians to be a negative practice - thus a problem; and over 90% of the total sample of citizens held this point of view. Among responses regarding multiple functions, 27% said that this phenomenon was caused by a greed for money (i.e. seeking many sources of income);

24% explained that it is not possible to exercise so many functions/have so many posts and to perform them well and in the interests of the people; 20% estimated that multiple functions meant a concentration of power in a few hands only - which is not democratic; 19% said that multiple functions give too much power to the parties. Only 9% said that having multiple functions/job positions is not a problem if someone is actually able to carry out all such functions and work effectively in one's job positions.

People additionally disapprove of the practice that highly positioned statesmen/women have, simultaneously, active and high-level roles to play in their respective parties. Fifty-four percent of the sample disapproved of the practice, 29% expressed their disapproval only with regard to its affecting the highest positions (Prime Minister, the President of Serbia, and ministers); 15% thought that having both an active party function and some form of state duty or duties would not influence a person's effectiveness or performance in both such roles.

Tolerance of Corruption in Public Office, and an Efficient Anti-corruption Strategy

Serbians are sensitive to and will not tolerate corruption. Persons said that if they knew that a politician from the party s/he usually votes for was corrupt, s/he would go to the party to denounce him (34% of answers); while 33% would not vote (i.e. would abstain), 22% would vote for another party, and 4% said that in spite of the corruption they would still vote for their party because the others are no better.

Other indicators again demonstrated great sensitivity to and non-tolerance of corruption. People claimed that they would immediately denounce someone who asked for a bribe (though my own personal opinion is that this is an overstatement - such denouncing would not really be carried out when someone was *really* faced with being bribed and had to make an assessment of the pros and cons involved). In response to a question about the *relative* corruption of political bodies (i.e. it is said that political corruption is *the same* in developed countries, though that did not prevent them from developing), 45% strongly disagreed with such a statement - while only 13% agreed (and others did not give an opinion).

Concerning the issue of why corruption is *not* being dealt with, 46% of research respondents expressed the view that the state is doing little to curb corruption because corruption is located within state organs *themselves*; while 21% felt that institutions

such as the courts, inspectorates and budget controlling mechanisms simply do and cannot work. A lesser number that said that there was no money to fight corruption, that political parties are not given enough support and that Serbian citizens are not supportive.

One question was: what do people think would be the most efficient policy via which to fight corruption? Interviewees gave three main answers - and could mostly support *why* they had answered thus. First, special and independent bodies should be created to fight corruption as being something of major importance, indeed having a notoriety; second, the rule of law and independent courts must be strengthened; and, thirdly, internal and external controls need to be established for all public institutions - along with sanctions for those who violate the rules and set standards in the public sector. A small amount (about 5% for each) mentioned the need to increase the involvement of all citizens, a need to prohibit multiple job positions/functions, the need to introduce obligatory standards of behaviour for all public servants, and the necessity of developing investigative journalism.

Conclusions and Policy Recommendations

General Conclusions

The complex transition process in Serbia still has its problems, ones that are specific and which have survived from the past. Among these problems is large-scale corruption, which has been a phenomenon in the country during the last six years (since Milosevic was ousted from power). In the post-Milosevic period, Serbia has passed many laws, and new institutions have been established to fight corruption. Yet the results are unsatisfactory, principally because the laws are deficient (or improperly implemented), institutions are weak and controlling mechanisms are almost non-existent. During the post-Milosevic period, there has been a tendency to accept the idea of state capture as the corrupted and non-transparent norm of public sector governance in Serbia. This trend has come via the growing stabilization of an oligarchic social structure and the loss of a strong pro-European and reformist policy orientation in government. Serbia has not yet established its own differentiating

outlines with which to separate the political and economic sectors. The high 'convertibility of influences' existing between them has created a non-transparent and unaccountable government, one undermining the main state institutions, i.e. above all the Judiciary, Parliament and the principal regulatory and controlling institutions. This politically-dominated system has thus created a framework for systemic corruption.

Accompanying these typical "transitional" problems are specific difficulties that Serbia has had when wishing to comply with international obligations related to the extradition of Ratko Mladic and other accused Serbs to the ICTY for their war crimes. The postponing of this obligation has held up negotiations with the EU in connection with the S&A agreement (with Serbia) – and this has curtailed, at least temporarily, EU influence on institution building in Serbia. The lack of "political will" as related to institution building in the area of judicial independence, professionalism, good governance and accountable executive organs has been clearly shown to us. An unrestrained political leadership in Serbia has, to a great extent, made the multi-party system into a rigid, party-feudal form of governance over public institutions and against citizens' interests. Such a way of operating can be identified as the phenomenon of state capture, which works on a two-way track: it seizes state influence and all public institutions for political elite interests, and then trades them for the non-legitimate needs of privileged business (tycoons) in return for the latter's secret financing (of parties).

To summarize, the results of this research dealing with state capture and the survey of public opinion have thrown light upon the following problems, and there is therefore a major need for policy options to deal with them:

- Tycoons have become part of the system (government) by buying political influence, via which ensure and protect their monopolies (which keep prices higher⁶⁶); they also have the benefit of favourable laws and various other privileges;
- There has been an increase in discretionary decision-making by ministers and the government;
- The administration of tax, customs, police, services and utilities etc. has become highly politicized;
- Multiple functions, an exaggeration of immunity, throwing MPs out of Parliament, a mingling of the highest party and state job postings/functions and an ownership of mandates by parties all point to the fact of an oligarchic political structure;
- Political/party influence over the new regulatory institutions has become greater via there being a corrupting of their control mechanisms, related selection processes – or, simply, by delaying their establishment;

- Power has become concentrated within the executive branch, thereby enabling it to subjugate Parliament and the judiciary system to such a degree that there is no effective control mechanism over such a government⁶⁷;
- Citizens have lost their confidence in all public institutions and in politicians because of these state capture mechanisms i.e. with their imposing their own interests over those of the public.

Policy Options and Recommendations

The main policy problem is: how can legal limits and effective control be established over the currently-unrestrained party leaderships when it comes to their managing the public sector and the public's interests? Related policy should lead to the creation of good governance institutions and a supportive legal environment, rather than merely focus on the negative consequences of the system's malady. To investigate what openings there may be, I will mention the positive elements of the changes that have occurred in the post-Milosevic era - and also point out public actors who might be able to implement new policies to curb state capture. Such positive elements in the area of policy change are:

- Economic reforms have not been discontinued during these 6 years (though a short break did occur in 2004, especially regarding privatization), which still leaves the door open to the development of liberal, competitive markets and completion of the privatization process. Progress in this area will reduce excessive state interference in the economy, diminish the power of monopolies and businesses seeking "favours", and will augment the shift towards a new style of entrepreneurship and corporate business based on the law and markets;
- Political competitiveness has not been completely eliminated; there is still room for new political alternatives. There are important differences in the main political orientations of existing parties, so citizens do have an opportunity to vote for persons who are reformist and EU-oriented;⁶⁸
- In spite of certain negative moves from the government against NGOs, the latter are growing stronger, are increasing their leadership capacities and strengthening their potential for influence by forming coalitions and by engaging in joint activities; they are also working with new control institutions (such as the Ombudsman for Information).⁶⁹ Investigative journalism is still in its infancy, but it has already produced some positive results⁷⁰;
- Institution-building and the development of a legal framework in the area of good governance is under way – and this needs to be continued, improved upon, implemented and also monitored;
- Citizens' awareness of corruption and state capture mechanisms is growing. *They* are the most important stakeholders and they need to establish alliances so as to combat extreme party/government power, so that more accountable and transparent governance can be established in Serbia.

Based on the findings of the research and the positive tendencies that now exist as regards combating state capture, it is evident that if policy strategy is to be effective it needs to be carried out at three different policy levels, simultaneously. The *first* refers to the international level. Within the context of Serbia's ambition to join the EU, the focal point must be to renew the suspended S&A negotiations with the EU. The condition for lifting the suspension should be Serbia's full commitment to its international obligations by extraditing Mladic and others accused of war crimes to the ICTY. Without opening up and making clear progress on the road to EU integration, it is highly unlikely that notable results could occur at the second and the third levels of policy-making to thereby do away with the phenomena of state capture and systemic corruption. EU support with regard to wider political, economic and institution-building reforms is essential. The *second* policy cluster refers to the institutional and legal improvements that should be introduced in the area of fighting corruption in order to achieve the goal of attaining a grade 5 rating as measured by the TI CPI index – signifying a 'bearable' level of corruption. The *third* level of policy measures requires an activating of society, civic organizations, professional associations, the media and NGOs to a sufficient degree so that they can exert effective, systematic external pressure on the government, thereby eventually bringing about its accountability, transparency and a responsiveness to the needs and interests of the country's citizens.

At the first level of policy, i.e. breaking away from political stalemate that seeks to avoid Serbia's international obligations, the following EU-related strategies can be recommended:

- Actively supporting the pro-European democratic forces and the civil sector, to seek to marginalize the old nationalistic forces that are serve to anchor the state capture system and which represent anti-European values and institutions;
- To urgently demand that the new Serbian Government, which will be formed after the forthcoming elections (January 2007), extradite Ratko Mladic and other accused Serbs to the ICTY so that negotiation processes with the EU can continue. Fulfilment of this obligation will give Serbia enormous potential to eradicate the secretive state bodies of the old regime existing in the police and military, which are the true stakeholders within state capture, nationalistic manipulation and anti-European policies;
- To strongly support Serbia's EU integration process, irrespective of the presently existing ambivalence regarding future EU enlargement. The integration process - in itself, with its insistence on political and economic reforms, free trade, and

institution building - is more important than the final goal of becoming a full member of the EU, although the goal *has* to remain tangible because of its motivational effects with regard to sustainable reforms and changes.

Second-level policies take on board *institution-building leading to good governance* deriving from an analysis of state capture mechanisms and then looking at the consequences involved. The following policies are to be recommended:

- Establishing, without delay, control mechanisms in all public and private sector areas where they are lacking. This will include implementation of already-existing laws. The State Audit Institution must be established and given real authority to audit all public budgets. The Agency to Fight Corruption, the Ombudsperson, and the Civil Service Agency additionally need to be set up and allowed to work. The latter is provided for by the State Administration Law. This, in turn, will promote professionalism and the complete de-politization of state administration at all levels and in all sectors, while requiring that all appointments be advertised and presented to the public;
- Introducing an Ethics Code in all public institutions, especially giving weight to the ethical behaviour of MPs, government officials, judges, prosecutors, presidents of controlling boards of regulatory institutions etc. The purpose will be to raise consciousness as regards ethical standards and increase the effectiveness of the public sector. A permanent educating of public functionaries and civil servants in the domain of good governance should be introduced. Themes covered should include the prevention of conflicts of interests and obligations to inform the public about public interest issues and about the need for citizens and professionals to participate in the drafting of new legislation;
- Eliminating the possibility of lobbying the government regarding customs taxes, petroleum excise taxes, transfers to municipalities, credits etc. – and eliminating the discretionary decision-making of ministries and governments, instead basing such factors upon the rule of law;
- Improving the already-existing laws and their regulatory bodies while adapting them to EU standards so that they will become more effective in their ability to control executive/political influences and where the latter's collusion with private business can be prevented. In particular, the new Law on the Financing of Political Parties should be drawn up and submitted to Parliament, and an effective control body should be set up to deal with its implementation;
- Advocating improvements in the Law on Conflicts of Interest - which was passed with many defects. It needs to take on board all functionaries, and it should prohibit MPs from having multiple public functions and government officials having multiple job positions; it also needs to professionalize the Board for the Prevention of Conflicts of Interest;
- Improving competition policy, thereby eliminating monopolies and the gaining of privileges in the Serbian economy, via introducing more effective "anti-monopoly" control bodies; this can be done by expediting privatization procedures, by legislating free trade policies and by signing free-trade agreements;
- Developing effective strategies with which to sell public company shares (not concerned with natural resources) in order to introduce responsible, efficient and

merit-based management instead of (as at present) party cronyism and nepotism.

Third level policies come from presented survey data showing the dissatisfaction of citizens with public sector ineffectiveness and widespread corruption. They include:

- Building up civil society's capacities and promoting NGO alliances via which to organize public debates dealing with party-based distributions of leading positions in the public sector and discrimination on the basis of political conviction;
- Organizing campaigns against multiple functions. Advocating the elimination of any mingling of state and party functions at the highest levels. Prohibiting the "feudal divisions" of executive power in the new government (one to be formed after new elections);
- Initiating public dialogue with the more open-minded political parties about changes for election laws so as to strengthen the role of Parliament, increase the responsibility and professionalization of MPs, reduce the scope of their immunity, and to enhance citizen-MP relationships in relation to proposing, implementing and monitoring laws in the area of good governance, to thus prevent corruption;
- Enhancing the capacities of investigative journalism and opening up public dialogue looking into state capture and good governance issues as well as ones relating to corruption. Supporting the journalistic profession in defence of freedom of expression. Advocating a real independence for the news media, TV and public radio services – thus, not allowing them to be an extended hand of the government;
- Making alliances between independent regulatory bodies (agencies) and NGOs. Facilitating their joint roles as strategic partners with regard to fulfilling their social roles, which will include education provision and related training and their monitoring of the effectiveness of such new institutions.

Our research and survey data will hopefully serve to convince politicians and government officials to take into account public opinion and the almost total lack of trust that citizens have as far as political institutions and political leadership are concerned; for this is leading to an alarming alienation of citizens from the political system. Systematic and sustainable degrees of (external) influence coming from civic organizations and NGOs will be able to bring about the changes that are needed in leadership style in Serbia.

ANNEX I

Methodology

- Completion: research was conducted during the period July 20-24 2006.
- Population: Serbia (excluding Kosovo) 18+
- Sample size: 1027
- Sample type: A three-stage, random representative, stratified sample
 - *Primary stage units*: Polling stations territories
 - *Secondary stage units*: Households (SRSWoR – random walk)
 - *Tertiary stage units*: Respondents within the household (Kish tables)
- Research sites: 67 municipalities in Serbia, 127 local communities, urban, peripheral and rural neighbourhoods
- Stratification: gender, age and region
- Sampling error:
 - ±1.23% for incidence 5%
 - ±2.45% for incidence 25%
 - ±2.82% for incidence 50% (*marginal error*)

Endnotes:

[1] For more about this state capture concept, see Nemanja Nenadic: "Tycoons and Corruption", in *Politika*, 12 November, 2006.

[2] The beginning of the transition in Serbia begins from the fall of the regime of Slobodan Milosevic, October, 2000.

[3] After the assassination, the government remained the same - and only the Prime Minister was elected. It was Zoran Zivkovic, the Vice-President of the Democratic Party and Djindjic's close collaborator.

[4] This is not to say that there was much less corruption in Serbia during the first (Djindjic's) government - it is to say that the first Government and its Ministers, as public institutions with the highest degree of influence, had not yet been captured by the party's elite's interests; nor were public appointments yet based exclusively on party criteria. Extreme appointment manipulation did not yet exist as a major link for appropriation of the public interest. The "party state" had not yet been created.

[5] Anti-corruption in Transition 3, Who is Succeeding...and Why? Authors: James H. Anderson & Cheryl W. Gray, WB, 2006

[6] This research has shows one positive trend: there was a reduction in the percentage of profit given as bribes. It was reported that this was due to smaller amounts being asked for bribery. Although the number of requests is larger, the total amount of corruption was lower.

[7] I am looking at only two governments after Milosevic: Djindjic's, and that of Kostunica. Some people refer to three governments, so include the Zivkovic government as a separate one. Since Zivkovic, as Prime Minister, did not change the Djindjic government from a personnel point of view, nor did he introduce any changes in policy - and since it only lasted from March to November 2003, I have not treated it separately.

[8] For the Serbian public, the assassination of Zoran Djindjic was understood to be a form of resistance by old cadres in security institutions to his intentions to modernize Serbia and make the country ready to join the EU as soon as possible. His cooperation with the Hague Tribunal in relation to war crimes was part of his threat to reform the military and secret police and bring in new administrative personnel.

[9] The Democratic Party of Serbia (DPS), whose president is Vojislav Kostunica, and who is presently Prime Minister of Serbia, and ex-President of the Federal Republic of Yugoslavia.

[10] This proves that the EU has stopped negotiations with Serbia about the S&A agreement because of the lack of political will to extradite Ratko Mladic and others accused of war crimes to the ICTY.

[11] The Law on the Prevention of Conflicts of Interest was passed in April, 2004; The Law on Free Access to Information in November 2004, The Law on the State Auditing Institution at the end of 2005; The Law on the Protection of Competition - the "Anti-Monopoly law" – in September, 2005; while the Ombudsman Law and the Anti-corruption Strategy was passed by Parliament in December, 2005.

[12] Ex-minister of Finance, Bozidar Djelic, says that the new wave of politization of public institutions has led to a unilateral increase in discretionary decision-making by the Government (being unsupported by law or Parliamentary decision-making) regarding different types of taxes (excise taxes on petroleum, customs tariffs, etc.). These were previously regulated by law. See: *Kada cemo ziveti bolje* (When We Shall Live Better), Sluzbeni Glasnik et al., Belgrade, 2006.

[13] After considerable pressure by the International Monetary Fund to begin the process of privatization of public companies, the Serbian Government strategy aims to partially privatize the Serbian Petroleum Industry (Naftna industrija Srbije – NIS), which will take place some time in 2007.

[14] Research looking at the origin of the present-day economic elite indicates that it has been recruited from ex-socialist companies, beginning in 1989. Their former directors, experts and managers, once part of the nomenclature, are the 'tycoons' of today. Mladen Lazic, "Recruitment of the New Economic and Political Elites", *Republika*, June 2006.

http://www.policy.hu/vpesic/final_version_policy_paper.html - _ednref15

[15] The whole case, in detail, was presented and published by the Council Against Corruption of the Government of the Republic of Serbia, in Serbian and English: *Corruption, Power, State*, Part two, by Verica Barac and Ivan Zlatić, *Res Republika*, Belgrade, 2005.

[16] For a description of the corruption affairs, see *Okupacija u 26 meseci 2004-2006* (Occupation in 26 Months, 2004-2006). Centar za Modernu politiku (Centres for Modern Politics), Belgrade, 2006.

[17] The four parties are: the Democratic Party of Serbia (DPS) of Vojislav Kostunica, the Democratic Party (DP) of Boris Tadić, who is also President of Serbia, the Serbian Radical Party (SRP) of Vojislav Seselj (which is the biggest individual party in the Parliament), and Mladjan Dinkić's G17+, presently Minister of Finance.

[18] The official justification for such a hasty adoption of the new Constitution was to "keep Kosovo within Serbia" by saying in the Constitution that Kosovo is a part of Serbia.

[19] The president of Transparency Serbia, Vladimir Goati, said that Article 102 of the new Constitution (which gave mandates to the parties) singled out Serbia as the only European country to have such a law. This type of rule only exists in some Asian countries (e.g. Bangladesh, Pakistan, India).

[20] The mandate of the Governor of the NBS does not coincide with elections or changes in the Parliament or Government. The same goes for the Ombudsman for Information, whose work became influential and well appreciated by the public. The impression is that somebody from the Government asked for his removal because he performed his public role in a proper and independent way (e.g. he caught the Minister of Police lying).

[21] To protect the parties' interest in keeping control of the Serbian Parliament's mandates, the three main parties (the DPS of Kostunica, DP of Tadic, and the SRP of Seselj/Nikolic) decided to 'disengage' the sovereignty of the people by giving the ownership of all mandates to parties. The real user of sovereignty (which should stem from the people) will be the parties' leaderships, enabling them to exercise state authority, if not directly, then indirectly via owning MPs' mandates. See: Aleksandar Molnar, *Republika*, October 24, 2006, page, XXII, XXII.

[22] In a recent Interview, the former vice-president of the Serbian Government, Miroljub Labus, said that "the tycoons cooperate perfectly with all parties – from the Radicals to the Democratic Party of Serbia; they have become part of the system". Daily *Danas*, 11-12 November, 2006.

[23] Given the current constellation of political forces and the proportional election system, no party can win a majority. Therefore, coalitions are formed at all levels of authority. At the local government level, coalitions are broader and their clashes over divisions of power are the cause of constant de-compositions or breakdowns of local governments.

[24] For instance, the Capital Investments Minister publicly admitted that the public company "Serbia Railways", which is under the control of his party (the director of the company is from his party) had not respected the procurement procedure when buying Swedish railway carriages. In spite of the admittance, there were no consequences for anybody because if the Minister and the Director of the public company were to have been made responsible and subject to legal proceedings it could have prompted the withdrawal of support to the government of his MPs' - and the Government would have fallen. The person who disclosed the irregularities was dismissed from his post. The Finance Minister found himself in a similar situation when the case of the National Saving Banks was once again opened to the public. This connected the Minister with corruption. The accusations against the Minister were disclosed on a TV show by the President of the Anti-corruption Council of the Government of Serbia, Verica Barac - yet to no avail, as the same protection mechanism was applied.

[25] Implementation of the new Law on State Administration occurred in July, 2006. Along with the many problems involved in its application and the usual deficiencies of the law itself, it was reported that many

adverts began to appear in newspapers as regards positions open for deputy ministers. See: Ana Trbovic, *Blic* (daily newspapers), November 25, 2006.

[26] Only 3 parties (there are about 39 active parties and a total of more than 400 registered parties) submitted on time their complete annual financial and activity report to the Financial Board of the Assembly. This shows that parties do not respect obligations as established by law. For greater details see: Vladimir Goati, *Partijske borbe u Srbiji u postoktobarskom razdoblju* (Struggles among Parties in Serbia in the Post-October Period), Fridrich Ebert Shiftung, Belgrade, 2006, pp. 179-204.

[27] The source for determining the number of schools in Central Serbia: *Statistical Year Book of Yugoslavia*, 2000. Bozidar Djelic reported that there are 3960 primary schools and 577 secondary schools (the total for Serbia), *Kada cemo ziveti bolje*, Belgrade, 2006.

[28] The DPS (Democratic Party of Serbia) president is Vojislav Kostunica, who is also the Prime minister; G17+ president Mladjan Dinkic is Minister of Finance; SRM (the Serbian Renewal Movement of Vuk Draskovic, President of the Party, is Minister of Foreign Affairs, while NS (New Serbia), President Velimir Ilic is Minister for Capital Investments. The government, thus composed, still did not get a majority in Parliament and, as a minority government, it has to be supported by the SPS (Slobodan Milosevic's Socialist Party of Serbia, now led by Ivica Dacic).

[29] The first post-Milošević government comprised 18 parties, though it avoided the 'feudal' dividing of portfolios. The first government (2001-2003) came in two parts: one composed of experts and non-party personalities who got their positions on merit - and the second was political, being composed of numerous political leaders of the parties who participated in the grand coalition against the Milosevic regime, and were given positions such as Deputy Prime Minister. The composition of each ministry was a mixture of different parties, so effective control was achieved even without strong or rigid institutional rules for means of control.

[30] This coalition does not exist any more. After the ruling coalition was formed, some parties and coalitions split. Details about the consequences of these new divisions for the public sector are not provided.

http://www.policy.hu/vpesic/final_version_policy_paper.html

[31] The Intelligence Service was used, last year, to spy on MPs to see their intentions as regards voting for the 2006 Budget. Two people were expelled from Parliament overnight because they said that they would *not* vote in favour of the Budget.

[32] The non-transparent approval of credits to farmers by the Ministry of Agriculture was denounced most often in public by the Radicals, as farmers are their main constituency.

[33] Data about both ministries and their party appointments have been obtained with the help of journalists and 'insiders' who are previous or present holders of high senior positions in the Ministries.

[34] Since October, 2000, Serbia has gone through three National Bank governors. The first Governor was Mr. Dinkic, at present Minister of Finance; the second was a non-party expert appointed to replace Mr. Dinkic because he, as a vice-president of the G17, was involved in partisan politics; the third governor of the NBS was a candidate from the ranks of G17+ when this party became a member of the ruling coalition.

[35] For example, the Director of the Tax Administration of Serbia was a member of G17+; advancing politically, he became a member of the G17+ Executive Board; recently, he was transferred to the position of State Secretary in the Ministry of Finance, while his position in the Tax Administration was given to another member of the same party.

[36] Ex-Minister of Finance, Bozidar Djelic, in his recently published book said that he was under pressure from the local party boards of the DOS coalition, who "suggested" to him who the Tax Administration heads might be. He complained that he became very unpopular among DOS local activists because he refused to let them choose Tax Administration personnel. However, he estimates that during the last two years the situation has changed - in the opposite direction; some people without professional references have received positions in the Tax Administration, while some with established professional reputations have lost their positions at the request of local party boards or because there were doubts about their "party loyalty".

[37] Two Parties in the first government, The Civic Alliance of Serbia (CAS) and the Democratic Centres (DC), are small, liberal parties with many professionals and experts in them. Both joined the grand coalition against Milosevic.

[38] One Parliamentary MP said that we are able to talk about "the terror of government and politics over professionalism and qualifications in state administration".

[39] One candidate for school director in the city of Nis was threatened with death if she did not withdraw her candidacy. She was a victim of political revenge – something that has occurred all over Serbia. It was said that in all institutions and procedures, political pressures are the norm.

[40] The most striking case when the *school's own* choice for director won was in the Economic (secondary) School in Cacak.

[41] The case refers to the selection of heads of libraries, which the Republic of Serbia had founded, and whose appointments are given to the Ministry of Culture. Library heads in the cities of Nis and Jagodina have been appointed according to the party criteria of the Minister. This caused a major public outcry.

Candidates with better qualifications for the job threatened to appeal to the International Labor Organization for protection under the equal access to jobs/functions requirement. Via personal contacts, I learned that in many cases ministers are informed by local party boards as to who the favourite in any competition should be.

[42] The Police Minister has replaced all 16 Police District Heads and, in total, he has replaced about 700 senior policemen since he took over office. There is no audit or supervision of budget spending concerning the Police, nor civilian control of the police and intelligence. Police procurements are a “state secret”, i.e. are exempt from monitoring.

[43] “Public companies” in Serbia are companies that manage “public utilities” in different sectors, such as energy, transportation, telecommunications and natural resources. They are very big and are often monopolies. The Government of Serbia appoints their management boards. In each municipality or city there are public utilities whose management is appointed by the local government.

[44] Data about public companies is taken from articles published in July, 2006 issues of the Belgrade daily *Danas*.

[45] *Politika* is the oldest and the most influential of Serbian newspapers. Traditionally, it is controlled by the government. At present, half of it is owned by the German company Vac and half by smaller domestic share holders. In order to help the papers pay off its debt (6 million euros) and to retain control of 50 percent of shareholder equity, the Electric Company Electro-Distribution invested money in it - and became a 14% owner of *Politika*.

[46] The first thing that Kostunica's Government did was to illegally appoint a new director for State TV. Citizens are required by law to pay for this TV service, together with their electricity bill, although the RTS is not really an independent public service - as it is controlled by the government and the ruling parties.

[47] Justification for the dismissal was that an editorial written about Ratko Mladic was not a ‘local topic’. It should be mentioned that the newspapers were very successful financially and were widely read by the people of Zrenjanin.

[48] Although the Commissar for the Free Access to Information reacted - and requested that the companies respond as required by law - there has been no answer up to now.

[49] Under pressure from the IMF, the Serbian Government hired a foreign privatization advisor to assist in the privatization of Naftna industrija Srbija (NIS) – the Serbian Petrol Industry – which is one of the largest public companies here. Despite paying for strategy advice as regards the privatization procedure, the government secretly held negotiations with the Russian company (“Rosnjeft”) in order to avoid a

having to *publicly* announce a tender. The secret negotiations were held during the last two months of 2006 although privatization was planned to start at the beginning of 2007. Daily newspaper *Danas*, 6-7 January, 2007.

http://www.policy.hu/vpesic/final_version_policy_paper.html

[50] The League of Social-Democrats of Vojvodina.

[51] No exact number is available as to how many appointed positions (jobs) there are in the city of Novi Sad. There are only different estimations, varying from 500 to 1000 posts.

[52] I will not present in this paper the multiple functions of Government officials; they can be seen in the Policy Documentation Centres where I posted my published article dealing with the topic: <http://pdc.hu>

[53] Vladimir Goati, *Politicke borbe u Srbiji u postoktobarskom razdoblju*, *op. cit.* pp. 108-109. Goati shows the changing practices within parties' control over mandates in the Serbian Parliament during the 15-year time-span of the multi-party system.

[54] Two MPs of the G17+ said that they would *not* vote for the 2006 state budget just before the vote was about taken on it in the Parliament. They were excluded from the Parliament the very next day, via illegal activation of their "blank resignations".

[55] See more about the misdoings of the Administrative Board and the illegal usage of "blank resignations" in Goati, *op. cit.* pp. 109-110. With regard to the government's methods for creating its majorities, Goati concludes that it has "mutated from government *de jure* into government *de facto*, and this has maintained its position via usurpation".

[56] This is the case of the president of the Vojvodina Government, who is at the same time an MP, a vice-president of the Democratic party and a member of the Fund for Development.

[57] It was denied in public that a politician who is directly elected can hold another public office at the same time, referring to the widespread practice of city mayors simultaneously holding an MP position. See Nemanja Nenadic (Transparentnost – Srbija): "Sprecavanje i razresavanje sukoba javnog i privatnog interesa" ("Preventing and Resolving Conflicts between the Public and Private Interest"), in *Konflikt interesa kod javnih funkcionera i javnih sluzbenika u Srbiji* (Conflicts of Interest of Public Functionaries and Public officers), Transparentnost – Srbija, 2006 pp. 89- 106

[58] In an interview with one MP (a well-informed person) the following accusation was made during a Parliamentary session that was urgently called to strip the immunity of the State Prosecutor who had just been arrested: "The session was called because one businessman ordered the government to arrest all of his rivals. This businessman gave them a lot of money. This supposed justification for stripping the

Prosecutor's immunity was more than ridiculous - the real reason was that he had prevented Merkator from buying up C market. I will leave it to the reader to guess the name of the businessman who was bothered by the decision of the Prosecutor. This comment was made during the interview: "He gives them (to the ruling parties in the government) so much money that he can order them to do as he wants". *Skupstinska mreza*, October 2006, address:

<http://www.skupstinskamreza.org.yu/index.php?ID=9&itemTypeID=31&contentID=2>

[59] 'An unusual haste' was reported in the press. Crowds lined up in the ministries. There was a desire by the ruling parties to keep their political appointees in government, as if they were professionals. In great haste, exams for civil servants (professional status) were organized, and passing grades were required if persons wished to retain the positions held up to then. It was reported that some parties sought revenge against others, so that the other parties' 'people' would not pass these exams. It was also reported that some people with a secondary-level education only pass such an exam - while others, with a PhD, fail! *Blic*, daily newspaper, December 19, 2006.

[60] Ljubisa Stanojevic, professor for accounting and auditing, in *Politika*, November 20, 2006.

[61] According to the Transitional Report of the EBRD for 2005; only two ex-communist countries - Turkmenistan and Bosnia and Herzegovina - got such a low rating.

[62] A monitoring of the presidential campaign in 2004 showed that all candidates spent more money than was permitted, though nothing happened and no sanctions took place. To learn more about the problems of the controlling mechanisms set up by law, see the excellent monograph: Vladimir Goati, Nemanja Nenadic, Predrag Jovanovic: *Finansiranje predsednicke izborne kampanja 2004 u Srbiji* (Financing the Presidential Election Campaign, 2004, in Serbia), *Transparentnost - Srbija*, 2004.

[63] Detailed reports about such cases were submitted to the Government by the Anti-Corruption Council, though they have never been reviewed.

[64] A new form was created by Transparency Serbia for use when reporting money-collecting and spending within the context of the January 2007 elections. Clearer and more open reports should be submitted 10 days after elections have been held.

[65] The higher degree of concern about corruption than about Kosovo was due to the ongoing corruption cases being aired in public at the time of the survey... Other survey data, however, shows that concerns about Kosovo are higher than about corruption – though this does not change the fact that corruption is among the four biggest problems being faced in Serbia.

[66] Daily paper *Politika* carried out an experiment comparing basic food prices in the Czech Republic with those of Serbia: the conclusion was that in Serbia the prices are almost twice as high, due to the existence of monopolies.

[67] For just this reason, the President of the Anti-corruption Council, Verica Barac, in her last announcement said that the government had become “the centre of power and corruption”, quoted from *Republika*, December, 2006.

[68] As has been shown, there is a notable difference between the way the Democratic Party and the Democratic party of Serbia would lead the government, although they are *both* considered to be part of the “democratic bloc”.

[69] Some NGOs protested against the replacement of the Ombudsman for Information during the first session of the new Parliament, for they had cooperated very fruitfully with the Ombudsman on several occasions.

[70] The TV show “Insider” (on the B 92 TV station) is such a case. It has revealed all kinds of misdeeds coming from the government, especially in the area of police activities, security agencies, the courts and prosecution cases, as well as tycoons avoiding customs, cigarette smuggling, etc.